



FREEDOM OF INFORMATION ACT

(b) (6), Division Director, General Litigation
Division (Code 14), OJAG



FOIA Law and Regulation

- 5 USC § 552- Freedom of Information Act
Last Amended in 2016.
- DoD M 5400.07- DoD (FOIA) Program- 2017
- SECNAVINST 5720.42G- DON FOIA
PROGRAM-2019



Navy FOIA Organization

- NAVY FOIA Program Office (DNS-36)
 - Director, Ms. Robin Patterson
 - Marine Corps FOIA Office (ARSF)
 - Sally Hughes (USMC Public Liaison)
 - FOIA Requester Service Center
-
- DON Office of Chief Information Officer (OCIO),
Navy FOIA Public Liaison/DON FOIA Policy
 - Christopher Julka



The Administrative Process Overview

- Receipt of a written FOIA request
- FOIA Office directs/tasks a search for responsive records
- FOIA Office coordinates review(s)
- Release determination made and response letter sent to requester
- Right to file an administrative appeal
- Right to file a FOIA lawsuit in federal district court



The Administrative Process

Receipt of Request

- A proper, or “perfected” FOIA request:
 - Reasonably describes the records sought,
 - Should state a willingness to pay fees, and
 - Must be made in accordance with the agency’s published regulations.



The Administrative Process

- “Reasonable description of records” means:
 - An employee familiar with the subject area can locate the requested record with a “reasonable amount of effort.”



The Administrative Process

- Upon receipt of the request, you must:
 - Enter it into the FOIAOnline tracking system and assign a tracking number (program does so automatically)
 - Provide the requester with the tracking number on all correspondence.
 - Within 20 working days, provide FOIA requesters with the date the request was received and an estimated date when the request will be completed.



The Administrative Process

- If you receive a misdirected request and you do not have cognizance over the requested records, you are responsible for sending it to the correct command/FOIA Requester Service Center within DoD (known as a referral).
- If the documents are outside of DoD, you can send to the correct office (best practice) or advise the requester of where it should be sent (requires requester to submit a 2nd request). Some non DoD agencies will not honor a referral.



Initial Denial Authority

See SECNAVINST 5720.42G, Encl 1:

- Determines who is allowed to decide if the record is released.
 - Think possession and control.
- Other Stakeholders or Equities: Does the responsive information controlled by your command originate with another command or agency?



The Administrative Process

Statutory Time Limit

- 20 working days to make a release determination.
- Starts upon receipt of a perfected request by the appropriate Command/Echelon.
 - If misdirected request is received from another Command/Echelon, the time period begins no later than 10 days after it is first received by a Command/Echelon FOIA office.



The Administrative Process

20 Day Time Limit

- Time limit can be tolled once to obtain additional information (not fee related) “reasonably requested” from the requester.
- Time limit can be tolled an unlimited number of times if it’s “necessary” to clarify fee assessment issues with the requester.
- Clock starts again when an answer is received from the requester.



The Administrative Process

- The fact that a FOIA request is very broad or “burdensome” does not entitle an agency to deny the request (although fees will often provide a tool to negotiate a narrower scope).
- Inform requester of 10 additional days if you cannot meet 20 day time frame due to unusual circumstances. Must inform before 20 days.
 - Volume
 - Consultation with another Agency/Command
 - Geographical location of records



Fee Assessment

Three Types of Requesters	3 Fee Categories		
	<u>Search</u>	<u>Review</u>	<u>Duplication</u>
a) Commercial	Yes	Yes	Yes
b) Educational & Noncommercial scientific inst. & media (favored)	No	No	Yes (100 free)
c) All Others (Citizens)	Yes (First 2hrs free)	No	Yes (100 free)



Fee Limits

- Cannot charge for search time if:
 - The agency does not comply with the 20-day time limit, however,
 - If there are unusual or exceptional circumstances or voluminous records apply to the processing of the request, the command can obtain an additional 10 days, but you must inform the requester within 20 days that you are invoking the additional 10 day limit.



The Administrative Process

Adequate Search

- Agencies must undertake a search that is “reasonably calculated to uncover all relevant documents.”
- Must search where it is reasonably likely responsive records exist.
- Emails and other electronic records are treated the same as other records.
- Amount of search time provided free depends on fee status of requester.



The Administrative Process

Agency Records

- Supreme Court defined an agency record as:
 - Either created or obtained by an agency, and
 - Under agency control at the time of the FOIA request.
- Commonly known as “Possession and Control”



Exemption 1

- Protects national security information that is properly classified under the procedural and substantive requirements of an Executive Order on classification.
- Wide deference to agency if properly classified
- However all unclassified material must be segregated out and released
- “Glomar” response
 - (Glomar can be applied to any exemption)



Exemption 2

(internal administrative matters)

➤ Exemption 2

- Protects records that are “related solely to the internal personnel rules and practices of an agency”
- Greatly reduced after *Milner v. Department of the Navy* (2011)



Exemption 3 (other federal statutes)

- Absolute prohibition on disclosure – no agency discretion

- Limited prohibition on disclosure
 - Particular matters to be withheld
 - Specific criteria for withholding

DOJ FOIA website has list of Exemption 3 statutes



Exemption 4 (commercial/financial)

- Trade secrets
OR
- Commercial or financial information
- Often the subject of reverse FOIA lawsuits
- Usually handled by OGC



Exemption 5 (privileged information)

- Incorporates civil discovery privileges into the FOIA
- Threshold: inter-agency or intra-agency memoranda or letters
- Deliberative process privilege (+25 years old exception)
 - Pre-decisional
 - Deliberative
 - Facts generally not protected so segregability required
- Attorney work-product privilege
 - Prepared by an attorney or under his/her direction
 - In anticipation of litigation
 - No temporal limit
 - Facts protected
- Attorney client privilege
 - Facts from client to attorney are protected
 - Opinion from attorney to client are protected
 - Segregability may be required



Exemption 6 (personal privacy)

- Threshold: personal and medical files and similar files (interpreted broadly)
- Disclosure would constitute a clearly unwarranted invasion of personal privacy
- Privacy interest: living individual's interest in controlling dissemination of information about himself/herself
- Public interest: serves FOIA "core purpose" of shedding light on agency's operations or activities
- **Balancing:** In order to withhold information, the privacy interest must outweigh the public interest.



Exemption (7)

- Six subsections
- Threshold for all: Records or information compiled for law enforcement purposes. This includes enforcement of civil or criminal laws.



Exemption (7)(a)

- When disclosure could interfere with open investigation or ongoing criminal proceeding. This includes civil enforcement proceedings such as an administrative separation. The protection continues through the end of the proceedings, including appeals.
- Specific harm from disclosure



Exemption (7)(b)

- When disclosure of information would deprive a person of the right to a fair trial or an impartial adjudication



Exemption (7)(c)

- Disclosure could “reasonably be expected” to cause an “unwarranted invasion of personal privacy”

- Privacy interest
- Public interest
- Balancing
- “Glomar” response

- Broader than (b)(6) though often linked
 - “reasonably be expected” versus “would constitute”
 - “unwarranted invasion” versus “clearly unwarranted”



Exemption (7)(D) (Confidential Sources)

- Identities of confidential sources
- All information provided by confidential sources if compiled during criminal or national security investigation
- Determining whether source is confidential:
 - a) express confidentiality
 - b) implied confidentiality based on nature of crime and source's relation to crime.
 - Note: Retention of state documents contained within a federal document requires federal agency to process under FOIA because state agencies are not subject to federal FOIA. The exception for this rule is when the state agency provides document to federal agency under a promise of confidentiality. Such promise should be noted within investigation.



Exemption 7(e) (Investigative Techniques)

- Would reveal investigative techniques, procedures or guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law
- Techniques generally unknown to the public



Exemption (7)(f) (Safety of Individuals)

- Could reasonably be expected to endanger the life or physical safety of any individual



Obscure Exemptions 8 & 9

- Exemption 8: Protects matters contained in or related to examination, operating, or condition reports prepared by or for regulators or supervisors of financial institutions
- Exemption 9: Information on wells



Reviewing Documents

- **Referrals**--your file contains documents that originated with another Navy Command/ Echelon, DoD Component, or another Federal agency. You should make a release determination on your information within these documents, if any, and refer them for response to the requester.



Reviewing Documents

- **Consultation**--your document contains information that originated with another, Navy Command, Echelon, DoD Component, another Federal agency, or another nation or other entity. You must consult with the other entity to obtain its recommendation for release of this information. It's possible that you may have to consult with multiple Components/agencies.



Reviewing Documents

Release Determination

- Adopt a presumption of disclosure.
- Do not accept document markings (e.g. FOUO, classifications, privileges) at face value without a review. Be discerning.



Reviewing Documents

- Duty to segregate: The FOIA requires that agencies review each document, line-by-line, to determine if there is non-exempt information that can be segregated out for release - Courts are especially interested that agencies comply with this requirement.
- Cite all exemptions that apply to the exempt information.



Reviewing Documents

Must release unless an Exemption applies.

Example: Request for Investigations-b(7)(A)

- When disclosure could interfere with open investigation or ongoing criminal proceeding. This includes civil enforcement proceedings such as an administrative separation. The protection continues through the end of the proceedings, including appeals.
- Specific harm from disclosure



The Administrative Process

Release Determination

- Release determinations are communicated to the requester in response letters.
- Documents must indicate deleted information with black/shaded areas or brackets.
- Mark redactions with applicable exemptions.
- If records are withheld in their entirety, estimate the volume (e.g. number of pages, bytes, not documents) of requested information denied and provide this to the requester with exemption(s).



Release Determination

- Response should address each item in multiple-item requests.
- Must cite statutory authority (an exemption) to withhold information in response letter.
- Information is withheld by the Initial Denial Authority (IDA). Name and official title must be provided.
- Appeal rights must be provided for denied information or any other adverse determination.



Communication with Requesters

- Provide tracking number and telephone number.
- To help the requester get the requested information sooner, communicate to narrow the scope of or clarify the request.
- Resolve fee issues.
- Have agreements in writing—email is okay.



Significant FOIA Requests

- OSD ODCMO and SECNAVINST require acknowledged courtesy notifications of leadership prior to FOIA release in high-visibility cases.
- DNS-36 or HQMC-ARSF provides coordination and notification to senior officials and other stakeholders upon receipt and prior to release of High vis cases.



What is a High Vis Case?

- ✓ One size does NOT fit all.
- ✓ OSD ODCMO defines- “significant” as a FOIA request where, in the Component’s judgment, the subject matter of the released documents may be of interest or potential interest to DoD senior leadership. Any requests involving the current administration ...previous administrations, Members of Congress.....or current or previous DoD leadership would be included.
- ✓ Examples: GTMO, Camp David, SAPRO, anthrax, WNY shooting, Flag Officer incidents, foreign military matters, RCB Iran incident, Ship Collisions.
- ✓ When in doubt, call HQMC-ARSF or DNS-36 for guidance.



Resources

- [DoD Manual 5400.07](#)
- <https://foiaonline.regulations.gov/foia/action/registered/home>
 - Required NAVY FOIA processing case tracker
- OGC FOIA Community Of Practice-<https://donogc.navy.mil/foia/>
 - FOIA Deskbook
- DOJ Office of Information Policy-
<https://www.justice.gov/oip/foia-resources>
 - DOJ FOIA Guide
- NAVY FOIA webpage- www.FOIA.NAVY.MIL
 - FOIA SOP
 - Contains lists of Policies, Instructions, and Regulations



Questions?

➤ OPNAV/ SECNAV FOIA/PA Program Office (DNS-36 Help desk)

– (202) 685-0412; DONFOIA-PA@navy.mil

– Robin Patterson and (b) (6)

➤ HQMC-ARSF

– (703) 614-4008; hqmcfoia@usmc.mil

– Sally Hughes

DNS-36 FOIA presentation
at OGC/OJAG Conference, 2018.11.08

-1. People I met:

(b) (6), formerly of Annapolis, now at 4C234—N3/N5

(b) (6), NAVSEA

(b) (6)

(b) (6)

0. (b) (6)—Privacy (site development)

(b) (6)

(b) (6)

(b) (6)

(b) (6)

1. HI Viz Library/process —How do I get access?

Go to SECNAV website (Sharepoint) > DNS-36 tab > Department links (FOIA) > DNS-36 Internal
Department Links (FOIA)

*"Chris Julka has access because he is Policy"

Current issues: PETA, ship collisions, trans-gender, sex assault, used to be people running for
office.



DEPARTMENT OF THE NAVY FOIA APPEALS



DON FOIA Appeals— Authorities

- * I will present today on FOIA appeals, but keep in mind that on occasion I may state something about how appeals work for OGC that may not be correct concerning how appeals work for OJAG
- * Therefore, (b) (6) and (b) (6) may jump in to add to or clarify my remarks

DON FOIA Appeals— Authorities

- * SECNAV FOIA IDA and appellate authority
 - * Delegated IDA authority iaw SECNAVINST
 - * Delegated appellate authority to JAG and GC
 - * JAG and GC both delegate IDA authority because they are appellate authorities
- * GC has delegated DON FOIA appellate authority to DGC for those appeals concerning requests in which the subject matter falls within the GC's lanes (e.g., requests for information about commercial, environmental, real estate, civilian personnel matters)

DON FOIA Generally – Why Process Matters

- * The FOIA establishes the general process
 - * Compliance with the law
- * DoD Regs and DON Instruction est detailed process
 - * Compliance with regulation and policy
- * Federal District Court
 - * FOIA process matters because the Court will rely upon the administrative record throughout its handling of the FOIA lawsuit
- * Therefore, keep the process as clear/clean as possible—timely, precise, thorough, honest
- * Appeals are part of the FOIA process

DON FOIA Appeals

- * DGC is the appellate authority for OGC and Code 14 is the appellate authority for OJAG
 - * Manage all administration of appeals
 - * Coordinate/deconflict between OGC and OJAG
 - * Manage appeals docket in FOIAonline and in hard copy
 - * Process all appeals by coordinating with IDAs and counsel, and by preparing appeals package for each appeal for DGC/DivDir
 - * Package includes request, IDA letter, appeal, records (as redacted), the IDA's memorandum, my memorandum, and DGC's/DivDir decision letter
 - * Process post-decision admin and coordination, as well as finalize both in FOIAonline and hard copy

DON FOIA Appeals – Process

- * Receipt of appeal
 - * FOIAonline (FOL)
 - * Email
 - * Mail
- * If not in FOL, upload to FOL
 - * *Note: IDA must have opened and closed request in FOL for this process to be correct*
- * Contact IDA re: standard support
 - * Missing correspondence
 - * Records responsive to request (as redacted)
 - * Memorandum

Initial Screening

- * Determine if proper (perfected) appeal (timely, states basis, IDA identified)
- * “Triage” appeal, and either handle it pre-DGC/DivDir or prepare to provide support to DGC/DivDir
- * Identify what DGC/DivDir will need from IDA in order to make a decision
 - * Depends on nature of appeal, but always includes IDA memorandum

IDA Support

- * Search—Who, What, When, Where, How
- * Timeliness—usually just status report and agreement to process following remand
- * Substantive basis
 - * IDA memorandum should present a thorough analysis of the law that pertains to the appeal such that the DGC/DivDir need look no further for rationale and authorities
 - * Will require responsive records, with highlighted redactions with exemptions marked (to support later affidavit)

Pre-DGC

- * We create both a hard copy and FOL package for each appeal
- * Log appeal onto hard copy spreadsheet
- * Package for DGC/DivDir includes
 - * Request, IDA Decision Letter, Appeal
 - * Responsive records, highlighting redactions
 - * Other correspondence or tangential matters (e.g., complaints)
 - * IDA memorandum
 - * My memorandum
 - * Draft DGC/DivDir decision letter

DGC/DivDir

- * DGC/DivDir
 - * Reviews entire package, including the responsive records (even if voluminous)
 - * Relies heavily upon IDA memorandum
 - * If questions, we will ask IDA and provide answers to DGC/DivDir
 - * Back and forth with DGC/DivDir to ensure decision letter is correct, then signs and returns for action

Closeout

- * Close the appeal
 - * Hard copy—date letter
 - * Hard copy—place letter into file
 - * FOL—complete closeout in FOL, which includes uploading into FOL the DGC/DivDir letter or, if closing on an admin basis, the closeout document
 - * Email PDF to IDA
 - * File package for 6 years

Remands

- * Usually after negotiation with and agreement of the IDA
- * Remanded for reconsideration of IDA
 - * Release additional records
 - * Stand pat
 - * Give appeal rights
- * Appellant can then appeal within 90 days of IDA letter

Post Appeal

- * Litigation
 - * NLO or OJAG support to IDA
- * OGIS
 - * Requester/Appellant may ask OGIS to intervene at any time, including post-appeal
- * OGC and OJAG do not reconsider appeal decisions

Common Issues for IDAs

- * Ex 4: Where is Ex 4 in light of Supreme Court decision in *Food Marketing Institute v Argus Leader*?
 - * “Substantial competitive harm” removed from the equation concerning “confidential commercial or financial information”
 - * Submitter notification and the 10/20 days timelines
- * Ex 5: Must be deliberative and predecisional, must articulate actual and foreseeable harm, must consider segregability and discretionary release
- * Ex 6: Must articulate balancing test and conclude release would result in *clearly unwarranted* invasion
 - * Note that Ex 7(C) may also apply (investigations)

Common Issues for IDAs

- * Ex 2:

- * Post *Milner*, is there still an Ex 2? Yes, for records “related solely to the internal personnel rules and practices of an agency,” which include records related to “the conditions of employment in federal agencies — such matters as hiring and firing, work rules and discipline, compensation and benefits”

<https://www.justice.gov/oip/blog/foia-guidance-7>

- * 130e:

- * Refer to SECNAVINST 5720.42G, Enclosure 5

Common Issues for IDAs

- * Scope

- * See, <https://www.justice.gov/oip/blog/foia-update-oip-guidance-determining-scope-foia-request>
- * Note that scope is largely determined by clear, documented communication with requester

Common Issues for IDAs

- * Duplicative Requests (esp from serial requesters)
 - * Mr. Lattin email: “Unless we hear otherwise, and after discussing with Jim Hogan, we intend to continue to follow the DoD FOIA Manual and the DC case law to deny duplicate requests. We have already done so in a FOIA case filed on 5 Dec 18, *Buckovetz v Dept of the Navy*, No. 18-cv-02736, S.D. Cal., where the Navy argued administratively and intends to strongly argue in the District Court, that the 11th Circuit decision is wrong, or at least distinguishable, and the California Court should not follow it. We also have some pending administrative FOIA appeals where we intend to invoke the duplicate request defense. If we draw some sympathetic judges, we may get conflicting circuits and be primed for the Supreme Court.”

Common Issues for IDAs

- * 20 day timeframe
 - * IDA must manage workload
 - * IDA has 20 days within which to act (or explain that she cannot and provide timeline)
 - * IDA may well “bust” the 20 days
- * Requester may choose to view this as constructive denial and proceed to court
- * If appealed, OGC or OJAG typically grants the appeal and directs IDA to process forthwith

The IDA and the Process

- * The IDA is the key to the FOIA process
- * At request level
 - * If process is clean, fair, thorough, honest, and timely, little chance of a successful appeal
 - * Best way to ensure this is communication—early and often—narrow/clarify scope, manage SMEs, manage requester expectations
 - * Communicate well both during process and in letter
- * At appeal level
 - * Provide all support requested within 10 days
- * At litigation level
 - * Provide litigators with all support as required

The IDA and the Process

- * **TRANSPARENCY**

- * The FOIA is a RELEASE statute, and is all about transparency of Executive Branch records (after all, these are The Peoples' records).
- * The IDA must make the FOIA *process* itself transparent to lend credibility to the idea of transparency in government records
- * Clean—Make sure the record reflects the work done to meet the goals of the FOIA/transparency; no missing steps; clear reflection of actions; dates/timeline
- * Fair—Make sure the IDA makes a fair assessment of the request, a fair distribution to the right SMEs, a fair analysis of the FOIA wrt the records, and a fair explanation to the requester
- * Thorough—Make sure the work is thorough—in its review of the request, its search, its review of records, its analysis of the FOIA applied to those records, and its explanation to the requester
- * Honest—Above all, be honest in all your work; honestly reflect the record, honestly search and review, honestly analyze, and honestly explain it all to the requester

Checklist

- * Notification of appeal from OGC or OJAG
- * Requirements (10 calendar days):
 - * Provide all responsive records (except in case of classified records) reflecting the redactions in highlighter or red boxes
 - * Provide other correspondence with requester
 - * Provide thorough analysis of IDA's application of FOIA exemptions to redact information
 - * Complete action upon receipt of DGC/DivDir letter

Note on Exemption 4 -- CCI Decision Matrix

- * Is the information commercial or financial?
 - * Was the information obtained from a person?
 - * Is the information customarily and actually treated as private by its owner (*Argus*)?
 - * Is there a government assurance to protect the information (*Argus*)?
- * YES – go to next step
NO – not CCI
 - * YES – go to next step
NO – not CCI
 - * YES – go to next step
NO – not CCI
 - * YES – Withhold as CCI
NO – Outcome remains unclear...

QUESTIONS?



DON FOIA Update
Department of the Navy (DON)
Freedom of Information Act (FOIA)

April, 2019

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OCIO Policy & DON FOIA Public Liaison

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(703) 697-0031

Agenda

- Who is this For? —*DON FOIA professionals & supporters*
- Awards—*At highest level* (Slide 3)
- Expedited processing—*Don't hesitate* (Slides 4-5)
- Inspections—*Coming to an office near* (Slide 6)
- Stay tuned—*More teleconferences, more experts* (Slide 7)
- New DON-wide FOIA instruction (SECNAVINST 5720.42G)—
What's in it for you (Slide 8)
- Training—It's required. Request now. (Slides 9-10)
- FOIAonline—*The "Cloud" & the Perfect Storm* (Slides 12-19)
- OCIO—*Under Secretary = DON CIO* (Slide 20)
- Practice tips—*Response letter, use Comments, post*
(Slides 21-23)
- FOIA websites—*Get forms, reports, news* (Slide 24)
- Difficult requesters—*Call me* (Slide 25)
- *Questions?* (Slide 26)

Awards—from highest level

☐ DON

- NCIS ((b) (6) & team)
- (b) (6)

❖ DOJ

- NCIS ((b) (6) & team)

Expedited Processing

Look before you leap?

Expedited Processing

✓ **Who hesitates is lost!**

Expedited processing = Go to head of the line

Grant liberally!

❑ *10 calendar* days

❑ When in doubt, grant

Inspections

- Coming to an office near you
- Don't expect a heads up
- 2 main things:
 - ✓ You are on FOIAonline
 - ✓ You are trained

Stay Tuned

- More teleconferences with more experts
 - Navy
 - Marine Corps
 - OJAG
 - OGC

New FOIA instructions

❑ SECNAVINST 5720.42G, signed Jan 15, 2019:

- FOIA integral to DON mission
- All CO's bear primary responsibility for FOIA compliance
- Ramifying roles & responsibilities defined
- Annual inspections
- FOIAonline use mandatory
- Response letter must mention Public Liaison & OGIS
- Other topics: DCRIT (a.k.a., CISI), classified material, websites, PAO, release authority, IDA's, RSC's
- Shorter (35 pages)—Avoids overlap with DoD instructions
 - ✓ See also FOIA websites

❑ DoD instructions

- 32 CFR 286
- DoDM 5400.07 (replaces DoD 5400.7-R)

Training on the Law

❑ **Required annually, but Free & much available online!**

✓ Department of Justice (DoJ):

■ On-line course:

https://jkodirect.jten.mil/html/COI.xhtml?course_prefix=DOJ&course_number=-US001

✓ Classes in Washington, D.C.:

<https://www.justice.gov/oip/training>

❖ Intro to FOIA—May 21, 2019

❖ Advanced FOIA—April 16-17, June 11-12, July 23-24

Training on the Law

✓ Department of Defense (DoD) FOIA/Privacy Act workshops:

- March 26-28, 2019, MacDill AFB, FL.
- August 6-8, 2019, Scott AFB, IL

✓ Public Liaison (contact me)

*DON IT East, Norfolk, Va., June 3-5

Training on FOIAonline

❑ FOIAonline—

➤ Request dates for FOIAonline teleconference
(contact me) NOW!

➤ Training videos at
<https://www.foiaonline.gov/foiaonline/action/public/resources>

FOIAonline: Cloud migration

- Moved to “Cloud” on July 9, 2018
- “Cloud” = servers of AWS (Amazon Web Services)
 - New design
 - New features (e.g., library)
 - Greater reliability
 - Less cost

FOIAonline: Perfect storm

- Windows 10—Adobe Acrobat Pro
- CAC renewal
- Adobe Acrobat Pro—NAVSUP computers not on NMCI
- DON Tracker

FOIAOnline--Cloud Migration Tix

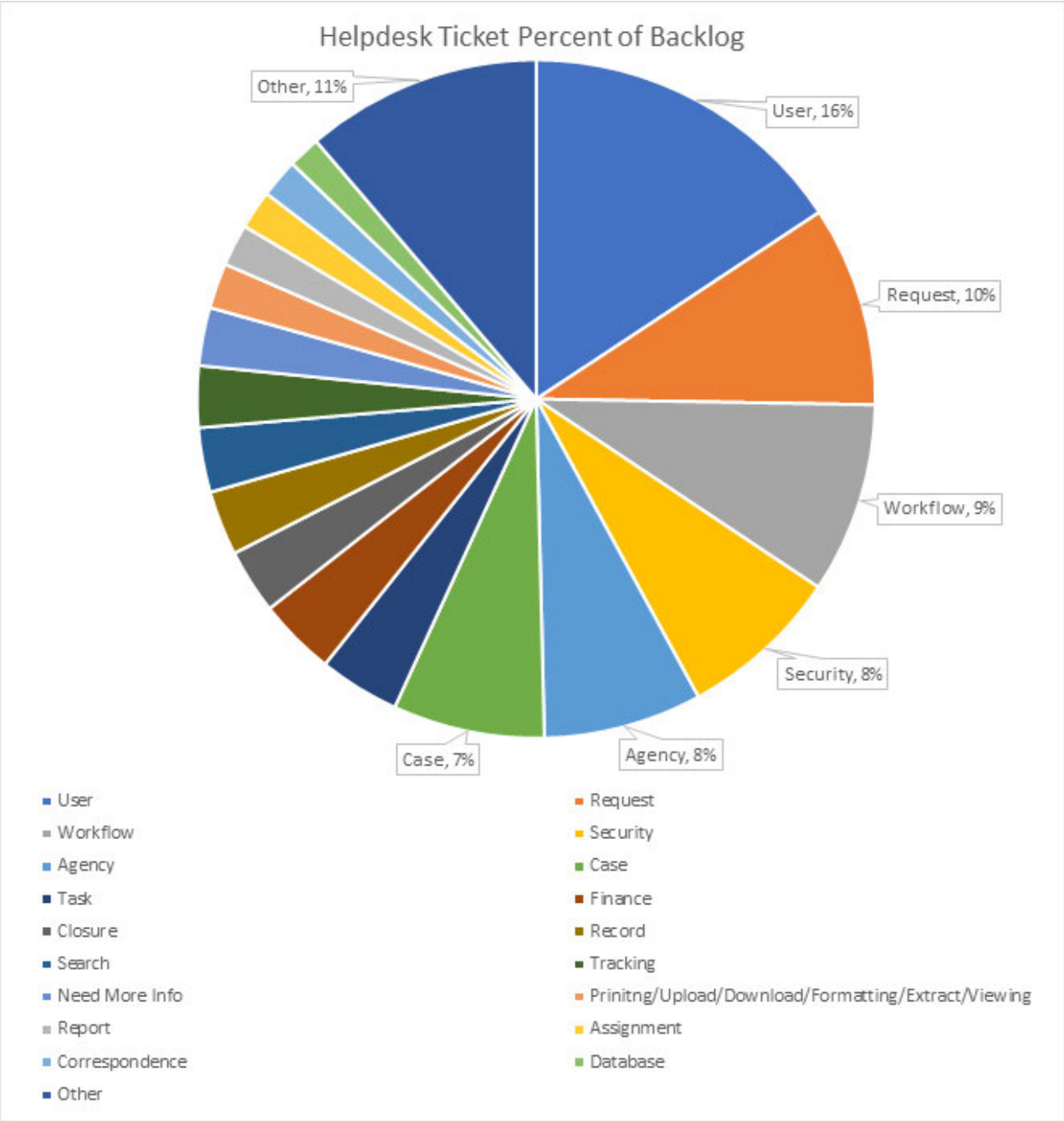
Current Escalated ticket count, total and by priority:

- Total – 384
- Critical – 36
- High – 71
- Medium – 170
- Low - 107

Examples of cases by rating category:

- Critical – Agency user stated account email is incorrect and is unable to receive system generated emails
- High – Agency user gets the error because the case is missing requestor info.
- Medium – Interim release issues and closer issues.
- Low – Public user notifications (low because there is a work around)

Ticket Breakout



FOIAonline—Cloud migration

*My top problems:

1. Setting up accounts
2. Invisible requests & appeals
3. Closing requests—Invisible dispositions

FOIAonline—Cloud migration

❑ Breaches—*Quiet since last fall*

- CNN learned that FOIAonline exposed exposed descriptions & justifications
- Effect on DON: 34 justifications for fee waivers/justifications, only PII = requester's address
- OCIO/EPA handling cleanup

Annual Report—Don't give up the ship!



- EPA “confident”
- Use FOIAonline, then it's up to FOIAonline

FOIAonline update: New Help Desk

- Email: foiaonlinehelp@sysaidit.com
- Phone: 844-238-7744
- New hours of operation: 8:00 – 6:00 pm ET (M-F, excluding federal holidays)

DON CIO now OCIO

christopher.a.julka@navy.mil

(703) 697-0031

OCIO: Office of Chief Information Officer

- DON CIO = Under Secretary of the Navy
- Smaller

Practice tips

- ✓ Standard response letter—advise of right to contact Public Liaison (me) and OGIS
- ✓ Use “comments” in FOIAonline to build a record
- ✓ Post responses—A way to awards & recognition

Practice tips

- DCRIT (10 USC 130e, a.k.a., CISI)—

Not a backstop for failure to classify

Practice tip—Post

*Now covered by Annual Report

❑ How: Use FOIAonline & websites (e.g., “Hot topics”)

❑ Requests with posted records increasing:

FY 18—9,302

FY 17—8,469

FY 16—3,505

❑ Reluctance:

- Fed wide
- Security concerns—Mosaic theory
- Penalty for mistakes

FOIA websites

- ❑ DON (Overall)—<http://www.doncio.navy.mil>
 - Cyberspace Central for all DON FOIA issues:
 - Policy (more up to date than instruction)
 - Hot topics
 - Annual Reports
 - Training
- Navy—<http://www.secnav.navy.mil/foia/>
- Marine Corps—
<https://www.hqmc.marines.mil/Agencies/USMC-FOIA/>

Difficult requesters

- Be professional
- Report abuse
- Public Liaison: Direct mediation & Assistance
(contact me at christopher.a.julka@navy.mil,
703-697-0031)

Questions???

Christopher Julka

FOIA Policy Lead/Public Liaison

Department of the Navy (Navy & Marine Corps)

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(703) 697-0031

Update on FOIA

Department of the Navy

March 9, 2020

Christopher Julka

Freedom of Information Act

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DON CIO

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Add to Agenda

- For updated slides see draft FOIA Update DCS 2018.11.01 of 11/6/2018 9:40 a.m.
- FOIA IS Important even if it doesn't kill people or break things
- Lawyers best at appeals; I can help before it is appealed—See new DON CIO—Directional Correctness (“The perfect is the enemy of the good”—except when launching a satellite when we may need “atomic precision” but otherwise, no).
- Fee waivers—grant liberally
- DCRIT pre-approved categories
- DoD FOIA Legal Coordination (list the various Hi Viz topics at issue)
- Argus decision on b4
- More is more for documentation: Emails suffice in lieu of letters, may drag onto desk top and then into FOIAonline.
- FOIA as alternative may be redacted in entirety per exemption 7A (NLRB has done this successfully for years).
- New case law (see next slide)
- New legislation (problem requesters)
- SECNAVINST 5720.42G addition (Comments to FOIAonline, not to DON Tracker)—(b) (6) NAVSEA
- Privacy
- Section 508
- Highlight provisions of new instruction
- FOIA.gov
- Why we're important (intro slide?—see (b) (6) slide presentation)
- FOL—show triage & other charts

Case Law

- American Immigration Lawyers Association v EIOR, 830 F3d 667 (DC Circuit, 2016)

Agenda

- FOIA News & trends: Ever busier, backlog high
- FOIAonline—Cloud migration
- Annual Report—Steady as she goes
- OCIO—Under Secretary is the new DON CIO
- Draft instruction (SECNAVINST 5720.42G)—up to SECNAV
- Practice tip—OGIS, posting
- Difficult requesters—call me
- DON FOIA website—place for forms, reports, news
- Training—FOIAonline, general guidance
- Awards—Not too late to nominate
- *Questions?*

FOIA news

- **FOIA Lawsuits Reach Highest Level Recorded in 25 Years**
- Lawsuits this past fiscal year rose an astonishing 26 percent, and are continuing to climb. FOIA court cases are now up over 70 percent from just five years ago

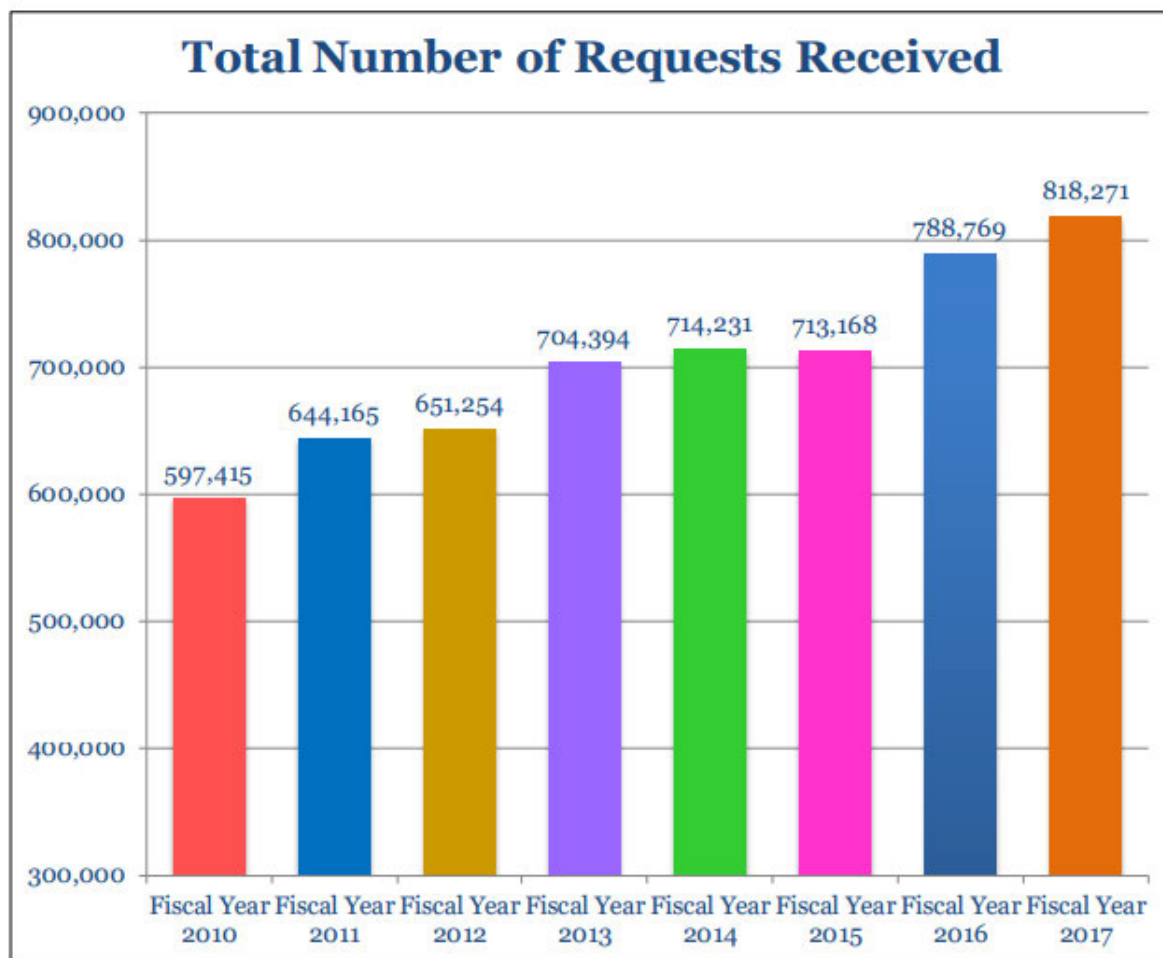
Source: FOIA Project Staff on FOIA Project Staff on January 16th, 2018

FOIA trends: Ever busier

- In FY 17, requests for all Federal agencies totaled 818,271 (up 4 % from FY 16)
- In FY 17, processing for all Feds totaled 823,222 (up 8%)
- FY 17 backlog at all Feds totaled 115,080 (down 3 %)
- 85 (of 116 reporting) agencies had a backlog of fewer than 100 requests. DoD is one of 14 with backlog of 1,000+

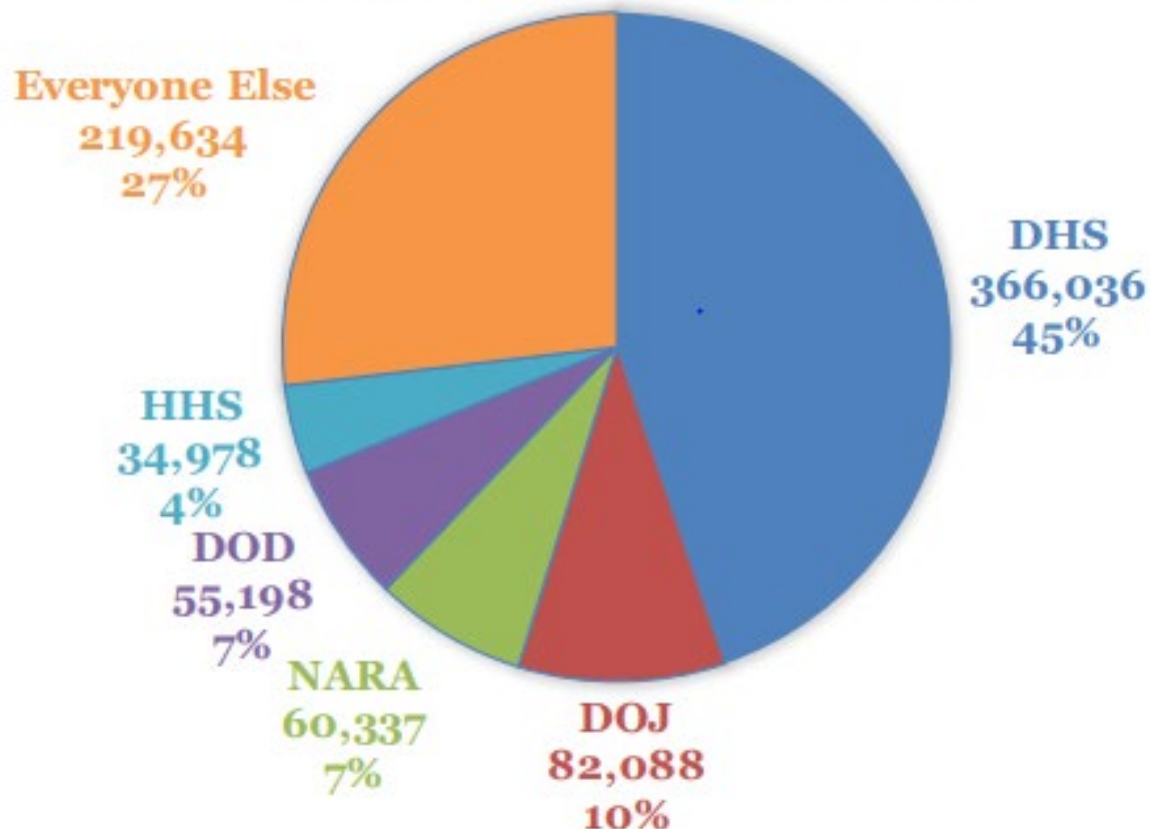
Trends—Requests (all Fed)

In FY 2017, the federal government overall received a record high 818,271 FOIA requests. This is a 3.7% increase of 29,502 requests from the previous records high of 788,769 requests received during FY 2016.

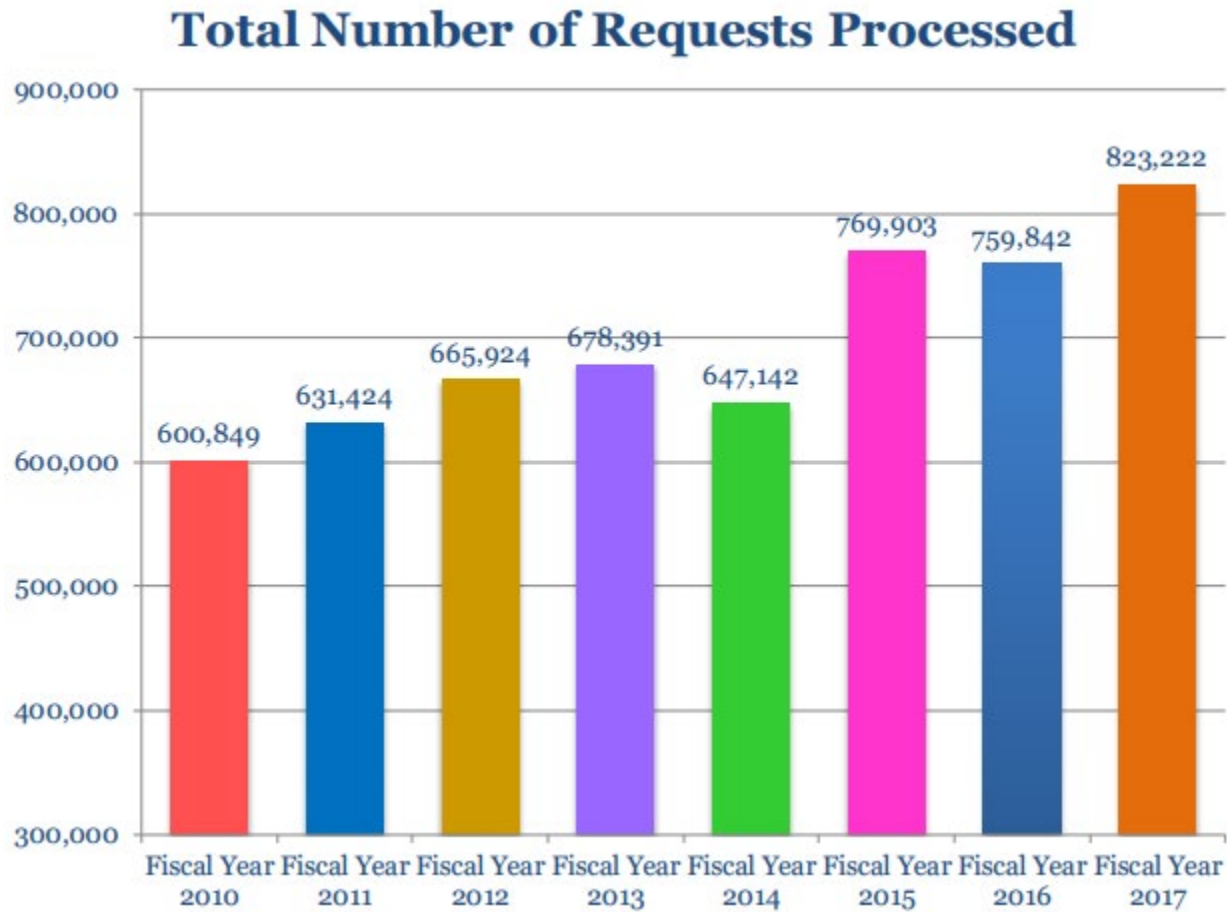


Trends—Requests (By Agency)

5 AGENCIES RECEIVE OVER 70% OF ALL FOIA REQUESTS

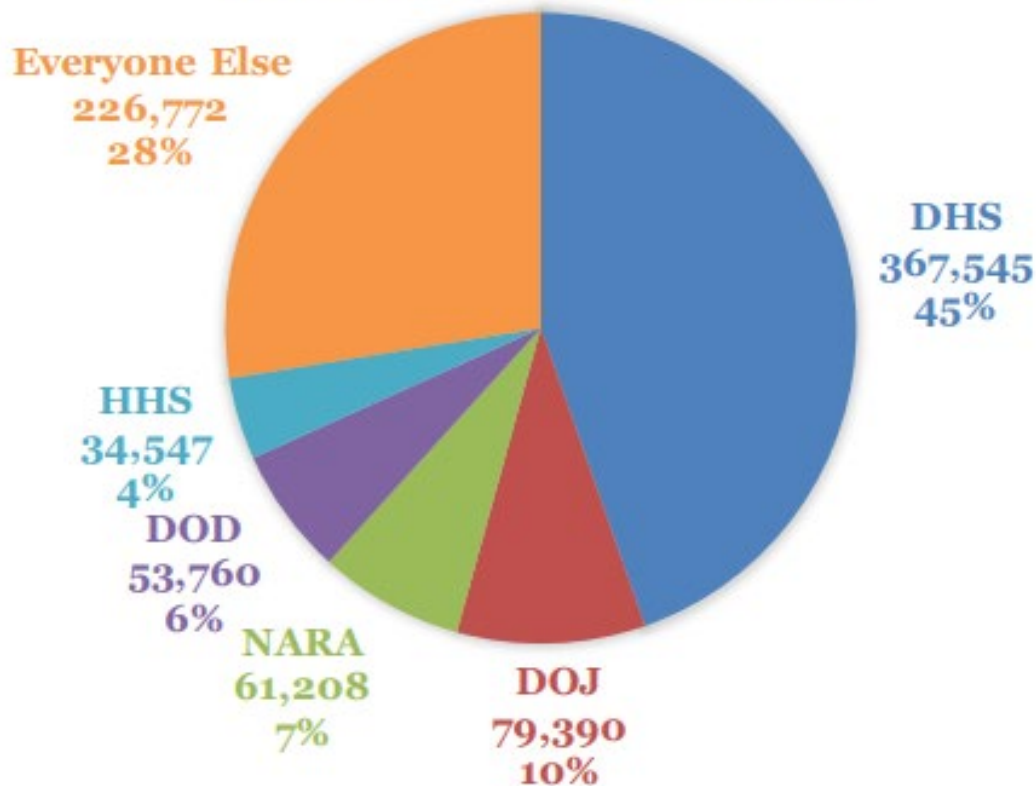


Trends---Processed (All Fed)

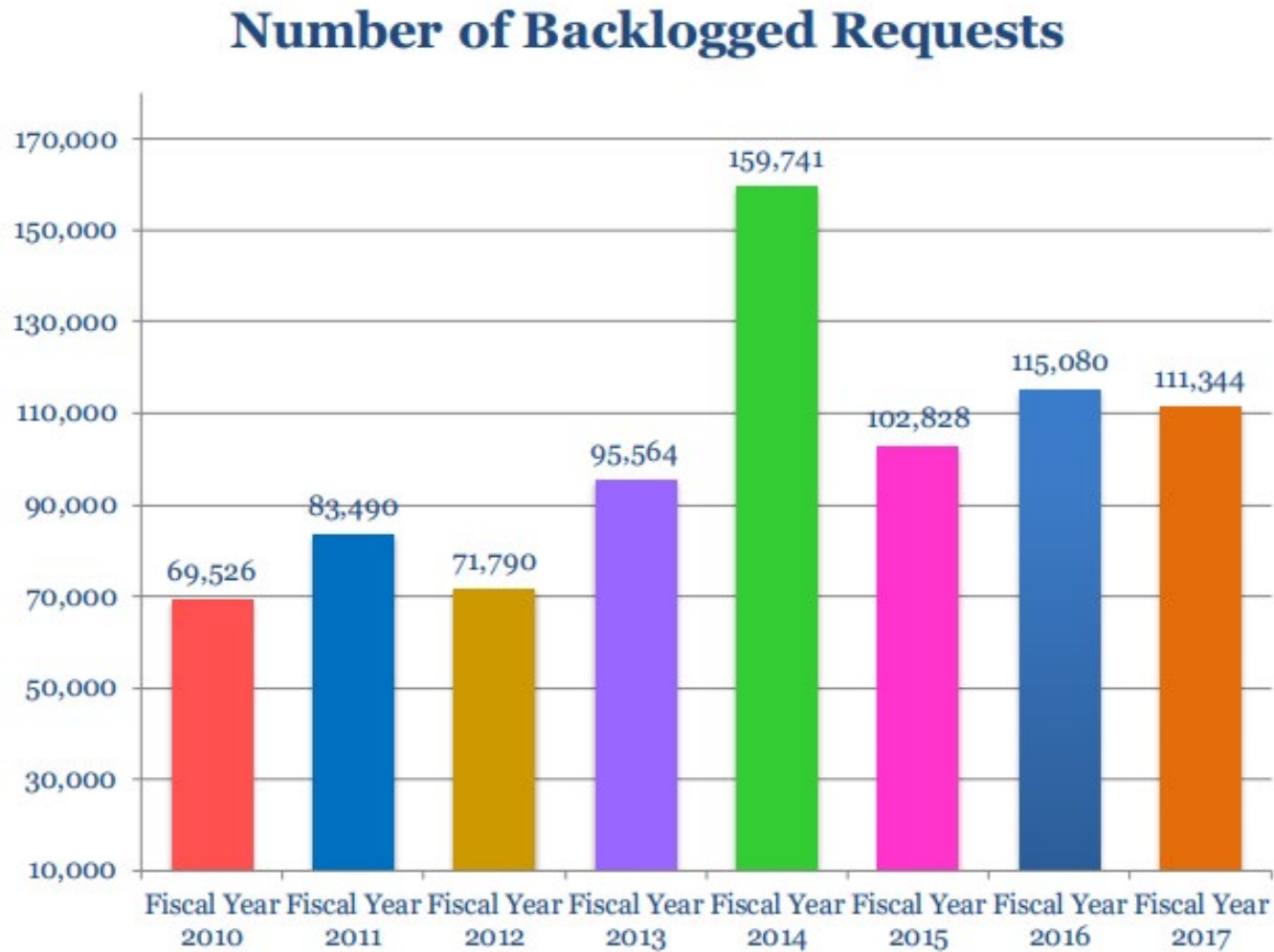


Trends—Processed (By Agency)

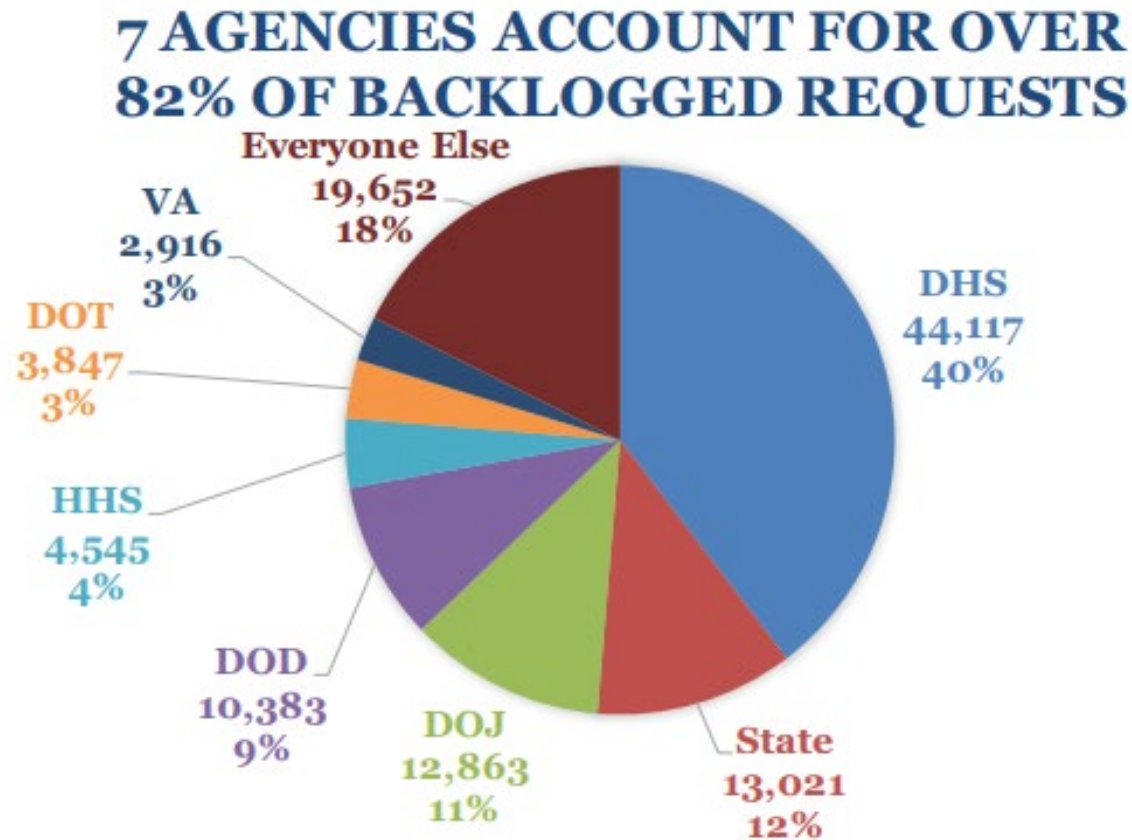
5 AGENCIES PROCESSED OVER 70% OF FOIA REQUESTS



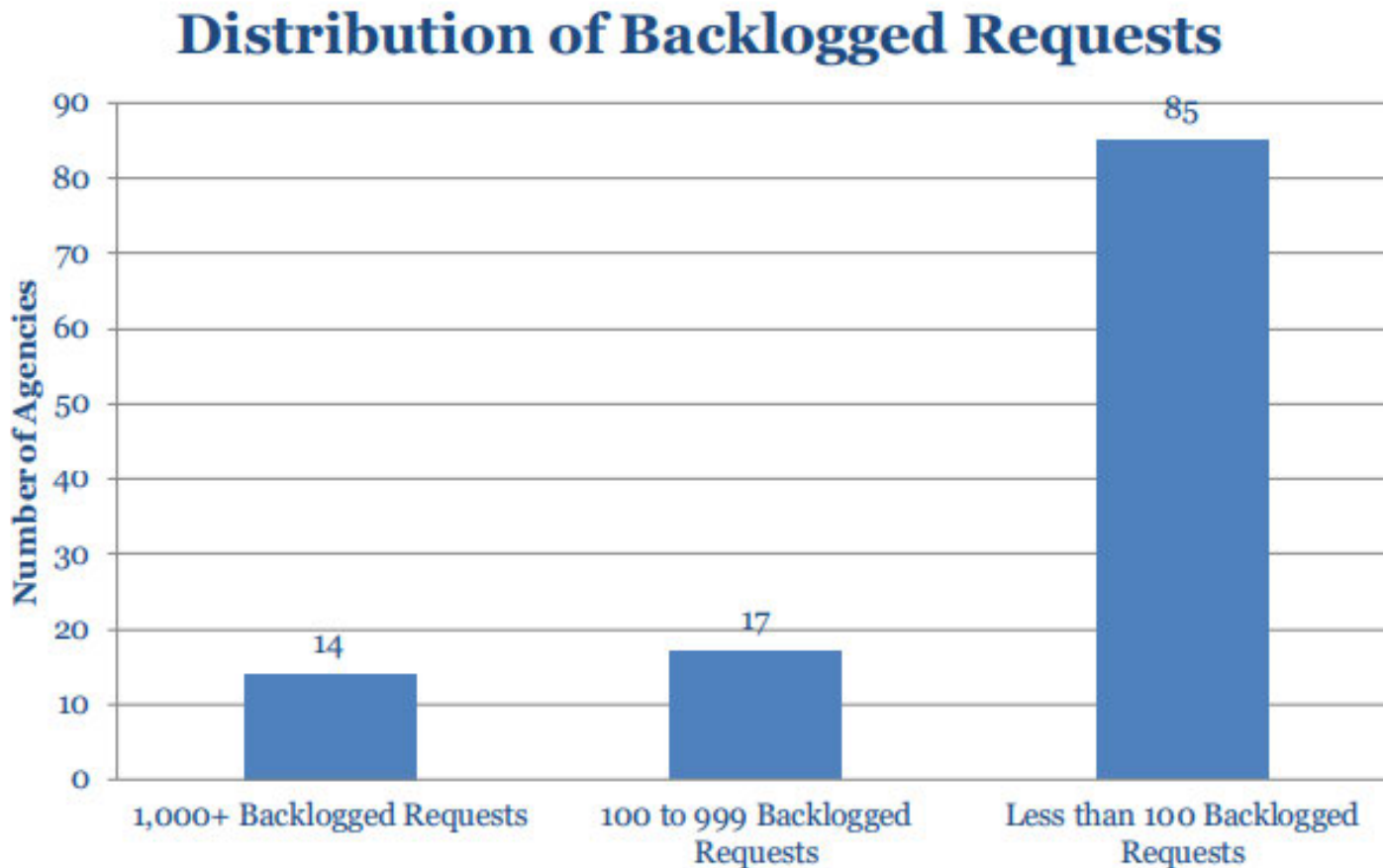
Trends—Backlog (All Fed)



Trends—Backlog (by Agency)



Trends—Backlog concentration



FOIA backlogs, DoD components (FY 2017)

DoD component	Backlog		Requests Received
	Requests	Appeals	
Air Force	1187	145	4,594
Army	957	171	25,666
DON (Navy & Marine Corps)	1,336	0	10,143
DoD Total	10,383	890	55,198

Backlog, 2017

—Navy & Marine Corps

	Dec 31, 2016	Sep 30, 2017	Dec 31, 2017	Sep 30, 2018
Navy	872	1,246	1,397	1,108
Marine Corps	153	90	200	250
Total	1,025	1,336	1,597	1,358

DON Backlog: 10 Oldest

- Requests: 5 of 10 closed in FY 18 (8/2/11, ~~6/24/11~~, ~~5/25/11~~, 5/10/11, 4/4/11, ~~3/11/11~~, 2/10/11, ~~1/13/11~~, 1/11/11, ~~1/3/11~~)
- Consultations: 3 of 10 closed in FY 18 (6/25/15, ~~5/13/15~~, 11/14/14, 9/11/14, ~~8/26/14~~, 5/12/14, 12/19/13, 10/10/12, 6/24/11, ~~10/04/10~~)
- Appeals: 10 of 10 closed in FY 18 (~~9/29/17~~, ~~9/29/2017~~, ~~9/29/2017~~, ~~9/18/2017~~, ~~9/14/2017~~, ~~9/14/2017~~, ~~9/14/2108~~, ~~9/8/2016~~, ~~9/6/2017~~, ~~9/6/2017~~)

DoD Backlog Tasking

- On May 1, 2017, DoD tasked all subcomponents with backlog greater than 500 requests (that includes us) to following:
- 5 percent reduction for each of next 5 FYs

Backlog: FY 2018's Biggest Losers

	Sep 30, 2017	Sep 30, 2018	Difference	%
NAVSEA	395	270	125	-29
NHHC	67	39	28	-42
NCIS*	130	104	26	-20
NAVFAC	130	106	24	-18
NAVAIR	117	95	22	-21

*On Jan 31, 2015, NCIS backlog was 319

Unperfected Requests

	Requests Unperfected		
	2016	2017	2018
Navy	1,347	1,815	1,142
Marine Corps	285	351	447
Total	1,632	2,166	1,589

FOIAonline: Cloud migration

- Move to “Cloud” on July 9, 2018
 - i.e., switched from servers managed by Booz Allen Hamilton to those by Amazon Web Services (AWS).
- - *New design
 - *Possible new features (e.g., library)
 - *Greater reliability, less cost
- Member agencies up to 20 (from 16 last year)

Help Desk Tickets for Past 12 Months

Issue Categories	October	November	December	January	February	March	April	May	June	July	August	September
Access	318	255	221	265	247	368	299	346	278	1277	1162	1012
Account Maintenance	18	3	6	9	9	16	16	12	7	76	69	43
Application Issues	249	229	187	221	209	305	214	534	506	1105	1346	882
Referrals	56	49	30	40	36	57	55	57	61	74	80	66
Status Inquiries	38	38	34	63	69	83	73	88	66	118	149	101
Systemwide Issues	56	25	48	25	26	105	105	164	175	86	198	65
User Setting Issues	19	34	15	19	17	19	19	24	18	35	22	12
User Suggestions												14
Other Issues	2	5	2	2	3	4	5	9	2	7	7	7
Total Issues	756	638	543	644	616	957	786	1234	1113	2778	3058	2202

Note:

Oct – April = 705 average number of total monthly tickets

May -- June = 1,175 ave. (prior to deployment requiring reports to be request)

July – Sept = 2,680 ave. post deployment

FOIAOnline--Cloud Migration Tix

Current Escalated ticket count, total and by priority:

- Total – 384
- Critical – 36
- High – 71
- Medium – 170
- Low - 107

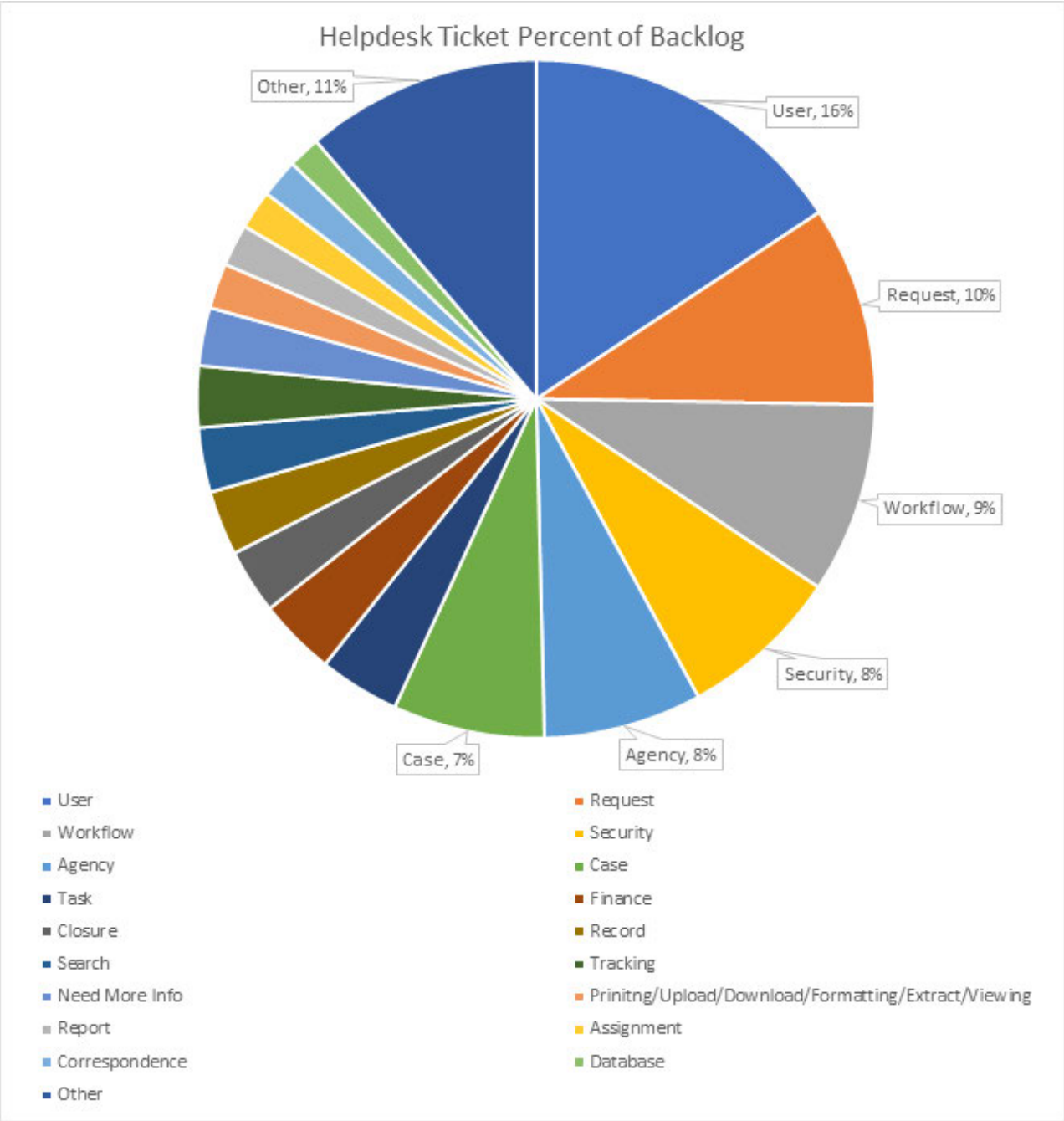
Examples of cases by rating category:

- Critical – Agency user stated account email is incorrect and is unable to receive system generated emails
- High – Agency user gets the error because the case is missing requestor info.
- Medium – Interim release issues and closer issues.
- Low – Public user notifications (low because there is a work around)

FOIAonline: Cloud migration

- Problems with transition
- Breach
- Windows 10—Adobe Acrobat Pro
- CAC renewal

Ticket Breakout



Listing of Help Desk Tick Categories and Descriptions

Functional Area / Bucket	Holds % Ticket percentage of Section	Description	ex. of Ticket
User	16%	User access or log-in functionality	Locked Account. Duplicate Account. Password issue.
Request	10%	Ability to follow the Request workflow input Request data retrieve request data etc	No Requester Information. Remove 'dashes' from requester phone number. Request not linked to account.
Workflow	9%	Ability for FOIA to transition from one state in processing to the subsequent step.	Case stuck in closeout. No Case Review Emails. Final disposition notice status.
Security	8%	Permissions access and encryption.	CAC card issue. Account blocked. Not authorized at submit request. Password reset for inactivity. Unlocking files.
Agency	8%	Agency specific configuration partner organizational structure group-wide functionality delegation.	Cannot assign to organization. Change Hierarchy. Cannot delete sub-agency. Group's permissions issue.
Case	7%	Ability to follow the Case workflow input case data retrieve case data etc	Gets Internal Error opening case. Missing Case. Print Case File Not Showing Exemptions
Task	4%	Ability to follow the Task workflow input Task data retrieve Task data etc	Task missing. Duplicate pending task. Can't access tasks assigned to me.
Finance	4%	Ability to calculate fees waivers invoices and cost. Financial processing within FOIAonline.	Admin cost. Fees schedule is wrong. Fee Waiver not creating task. Financing pages does not populate.
Closure	3%	Ability to follow the closure workflow input close-out data retrieve closure data etc	Cannot closeout. Close out task error. Restart final reply closure. Close out options have disappeared. Placeholder record exemption not being read during closeout
Record	3%	Ability to include Record workflow input Record data retrieve Record data etc	Null error trying to remove inaccessible records. Missing Records. Downloading all records for request.
Search	3%	Ability to search and retrieve information from FOIAonline	Index issue. Cannot find submitted cases. Advanced search does not work properly.
Tracking	3%	Ability to track progress and audit in FOIA.	Clock Days Incorrect. Extend Due Date Task. FOIA Log Report.
Need More Info	3%	Description of Ticket required more information	FOIA On-Line Issue. Case DLA-LANDM-2018-004943
Print/Upload/Download/Formatting/Extract/Viewing	2%	Ability to change format of FOIA information.	FOIAonline CSV file. Bulk upload/download. Print Case File Not Showing Exemptions
Report	2%	The ability to generate Quarterly Annual Ad-Hoc and other Reporting features.	Annual Report. Report not connecting to Denial reason. On-Hold Custom Report
Assignment	2%	Ability to follow the Assignment workflow input Assignment data retrieve Assignment data track and notification of Assignment etc	Assignment history. Cannot assign to organization. No Emails confirming assignment.
Correspondence	2%	Ability to correspond with Requestor. Email Transmittal information.	Correspondence not sending. Requester not getting correspondence or invoice. Deleting correspondence with special characters.
Database	2%	Data is stored and organized in a database.	Need backend data. Number Sign in File name.
Other	11%	Dashboard Release Appeal Document Migration Review Referral Exemption Interim Release Browser Letter Comment Consultation Enhancement Or Transfer	Request not in "View My Requests"; inaccurate release dates on previously released docs. Final Release; Won't let me submit an appeal; Error when uploading supporting file; Need Migration of FOIA Request; Cannot add reviewer. Unable to approve review; New Referral from Non-Participating Agency; Exemptions Not listed; Interim release timing out; No dropdown; Issues with Final Disposition Letters; Coordinator Comment Editing Function Change; Issue with review process for FOIA Consultation; Issue with 3 transfers

FOIAonline—Cloud migration

*My top problems:

1. Setting up accounts
2. Invisible requests
3. Closing requests—Invisible dispositions
4. Reports—Custom reports Sept. 30

FOIAonline—Cloud migration

- Windows 10—CAC issues
- Adobe Acrobat Pro—NAVSUP computers not on NMCI

FOIAonline—Cloud migration

- Breach

- *CNN learned that FOIAonline exposed exposed descriptions & justifications

- *Effect on DON: 34 justifications for fee waivers/justifications, only PII = requester's address

- OCIO/EPA handling cleanup

FOIAonline—Cloud Migration

Agency	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	July	August	Sep
CBP	233	198	138	198	218	322	282	329	330	748	989	720
DLA	7	2	7	4	2	5	4	17	16	37	47	23
DOC	43	39	29	32	30	36	27	73	75	96	149	80
DODOIG	10	5	4	4	3	7	4	13	8	40	35	20
DOJ	49	14	13	14	13	21	20	46	25	79	56	55
EOUSA	27	14	12	16	16	18	18	25	20	27	36	49
EPA	141	129	107	138	97	207	145	289	262	624	726	439
FCC	14	17	7	16	16	22	10	11	23	59	79	25
FLRA	1	0	1	5	4	2	3	1	0	3	4	5
GSA	8	14	5	7	11	6	7	20	25	68	59	35
MSPB	3	3	1	2	0	7	2	1	10	7	7	10
NARA	3	6	8	2	3	8	3	6	9	6	21	9
NAVY	48	45	55	54	41	75	54	101	110	175	231	158
NLRB	14	17	8	9	7	10	5	19	7	39	38	25
NRC		1	15	11	5	7	5	18	22	13	26	11
PBGC	0	0	0	3	6	3	5	20	10	25	28	13
SBA	16	12	15	17	17	24	14	25	13	23	10	12
SSA	15	24	25	17	11	20	24	32	17	77	86	53
USCIS	1	3	2	1	1	0	0	3	3	1	4	3
USPC								1	0	1	2	0
Unknown	123	95	91	94	115	157	154	184	128	630	425	457
Total Issues	756	638	543	644	616	957	786	1234	1113	2778	3058	2202

Annual Report—Don't give up the ship!



- EPA “confident,” but can we be?
- Use FOIAonline, then it's up to FOIAonline

Annual Report Schedule

- 10/26: Initial review of Annual Report (AR) and Raw Data Extract (RDE) with DOJ and select agencies
- 10/29: (started) Data Quality activities with agencies
(see next slide for errors identified to date)
- 11/2: Deploy Release 3.1.5 to correct known issues with AR and RDE
- 11/5: Subsequent review of AR and RDE by DOJ and select agencies

Pending results: provide AR and RDE to all agencies

- 11/5 – 11/19: Development team on stand-by to assist with error correction to produce final ARs and RDEs

FOIAonline update: New Help Desk

- Email: foiaonlinehelp@sysaidit.com
- Phone: 844-238-7744
- New hours of operation: 8:00 – 6:00 pm ET (M-F, excluding federal holidays)

DON CIO now OCIO

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OCIO: Office of Chief Information Officer

- DON CIO = Under Secretary of the Navy
- Smaller

New FOIA instructions

❑ SECNAVINST 5720.42G: Principal-level review complete, draft is with DRMD

- Present instruction (SECNAVINST 5720.42F) dates back to 1999
- Minimalist concept (shorter & DON specific): Supplements DoD instructions and DON website (<http://www.doncio.navy.mil/>)
- Key provisions:

CO's to take responsibility (awaiting Navy text)

90 day appeals period

Echelon III has IDA delegation authority

❑ DoD instructions

- 32 CFR 286—
- DoDM 5400.07 (replaces DoD 5400.7-R)—in effect, Jan 25, 2017

Tips--Document

- Build a record
- On FOIAonline, use “Comments”

Practice tips

- Letter of denial—advise of right to contact OGIS (& me)

Practice tip--Post

- Website: Hot topics
- Requests with posted records increasing:

FY 18—9,302

FY 17—8,469

FY 16—3,505

*Now covered by Annual Report

- Reluctance:
 - Fed wide
 - Security concerns—Mosaic theory
 - Penalty for mistakes

Tips--Posting: Addressing reluctance

Type of PII

- None/no risk
- Low Risk:
- High Risk:

How to fix

Nothing to fix

Remove ASAP

Remove ASAP & Report

Difficult requesters

- Be professional
- Don't have to submit to abuse
- Public Liaison: Direct mediation & Assistance
(contact me at christopher.a.julka@navy.mil,
703-697-0031)

DON FOIA website

- <http://www.doncio.navy.mil>
- Cyberspace Central for all DON FOIA issues:
 - Policy (more up to date than instruction)
 - Hot topics
 - Annual Reports
 - Training

Training for FOIAonline

- On FOIAonline, training videos at <https://www.foiaonline.gov/foiaonline/action/public/resources>

Training (general FOIA knowledge)

- Preliminary and annual refresher required for all DON FOIA processors. Available at DON FOIA website, under heading “Training” (<http://www.doncio.navy.mil/ContentView.aspx?ID=5232>)
- DoJ (<https://www.justice.gov/oip/training>)
- DOD FOIA/Privacy Act workshops:
 - *1) March 26-28, 2019, MacDill AFB, FL.
 - *2) August 6-8, 2019, Scott AFB, IL

Awards

- Nominate now!

- Excellence in DON Freedom of Information
- Categories: Leadership, Efficiency, Outreach, Program Compliance

- Past recipients: USMC (b) (6), NCIS (b) (6), NHHC (b) (6)

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Questions???

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Update on FOIA

Department of the Navy

September 15, 2020

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Agenda

- Changes at the helm: DoD, OJAG, DON CIO
- COVID-19: Cancellations (& virtualization); Effect on backlog
- Backlog Background—DoD Tasking of 2017 & Lawsuits
- Backlog Trends: Feds v. the DoD v. the DON; Biggest Losers; Big, but Invisible
- FOIAonline—Sunnier skies?
- DoD Enterprise Solution
- Annual Report—Steady as she goes
- Resources: Instructions & websites
- Practice Tips
- Privacy spills/DOD Safe
- DCRIT
- Training—FOIAonline, general guidance
- Awards—Not too late to nominate
- Difficult requesters—call me
- *Questions?*

Changes at DOD & DON

- ❑ OSD FOIA (DoD) gets new head again:

(b) (6)

(acting)

- ❑ Navy Civil Litigation Division (Code 14) Director:

(b) (6)

(retired) →

(b) (6)

➤ OJAG Appeals:

(b) (6)

→

(b) (6)

- ❑ ~~DON CIO~~ → ~~OCIO~~ → DON CIO or OCIO

➤ DON CIO = ~~Under Secretary of the Navy~~

Aaron Weis (previously DoD CIO Senior Advisor)

➤ ~~Smaller~~ Bigger

COVID-19

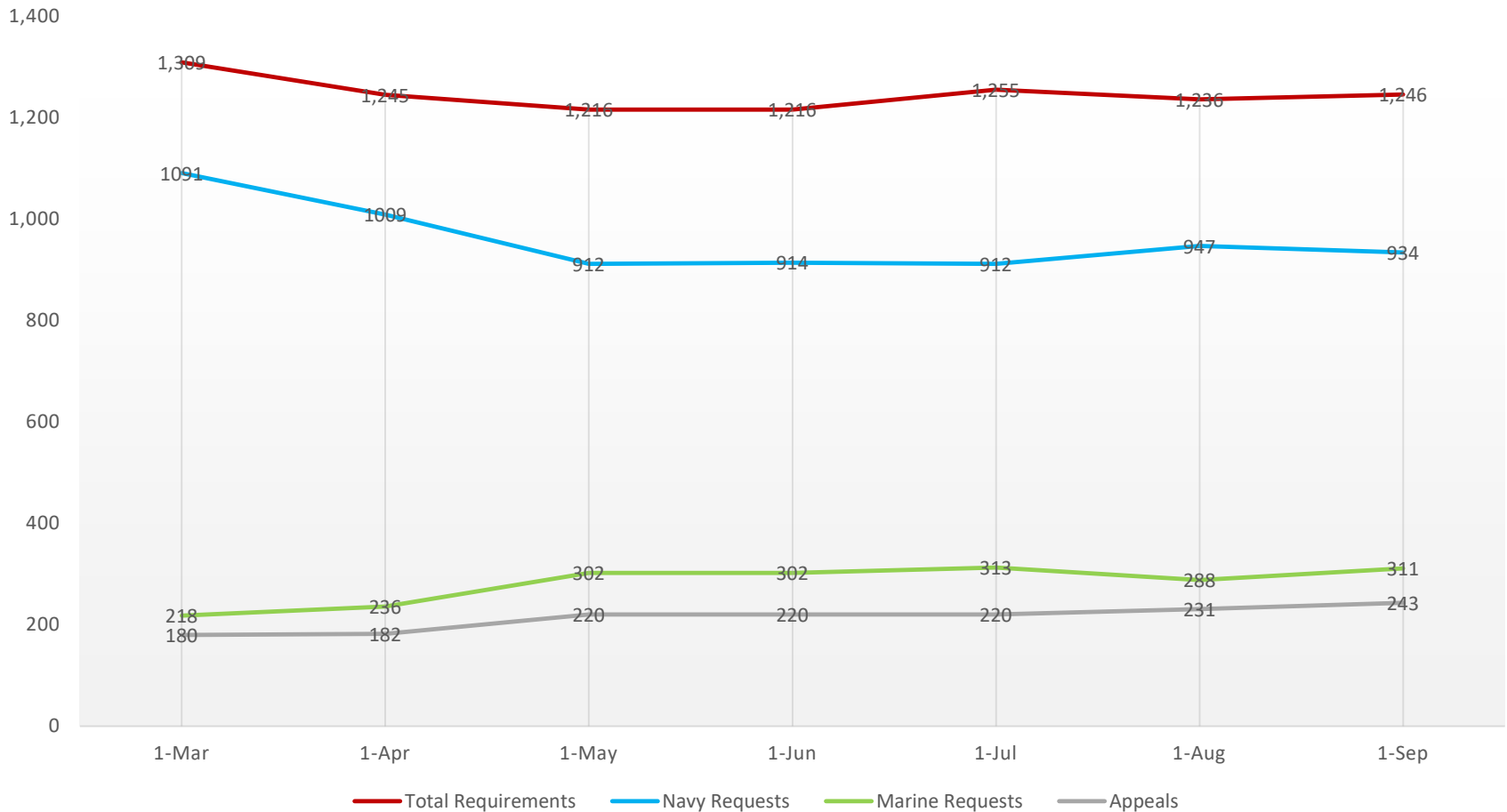
- *“Many federal FOIA offices—including EPA, Department of Agriculture, and the Department of Energy, reported E&E News—have transitioned to remote work conditions and claim that operations will continue, adopting a workflow heavy on electronic communication. The Federal Bureau of Investigation, though, took the strange step of cutting off electronic submissions altogether, requiring any requests to be made via snail mail”*

--Muckrock, March 20, 2020

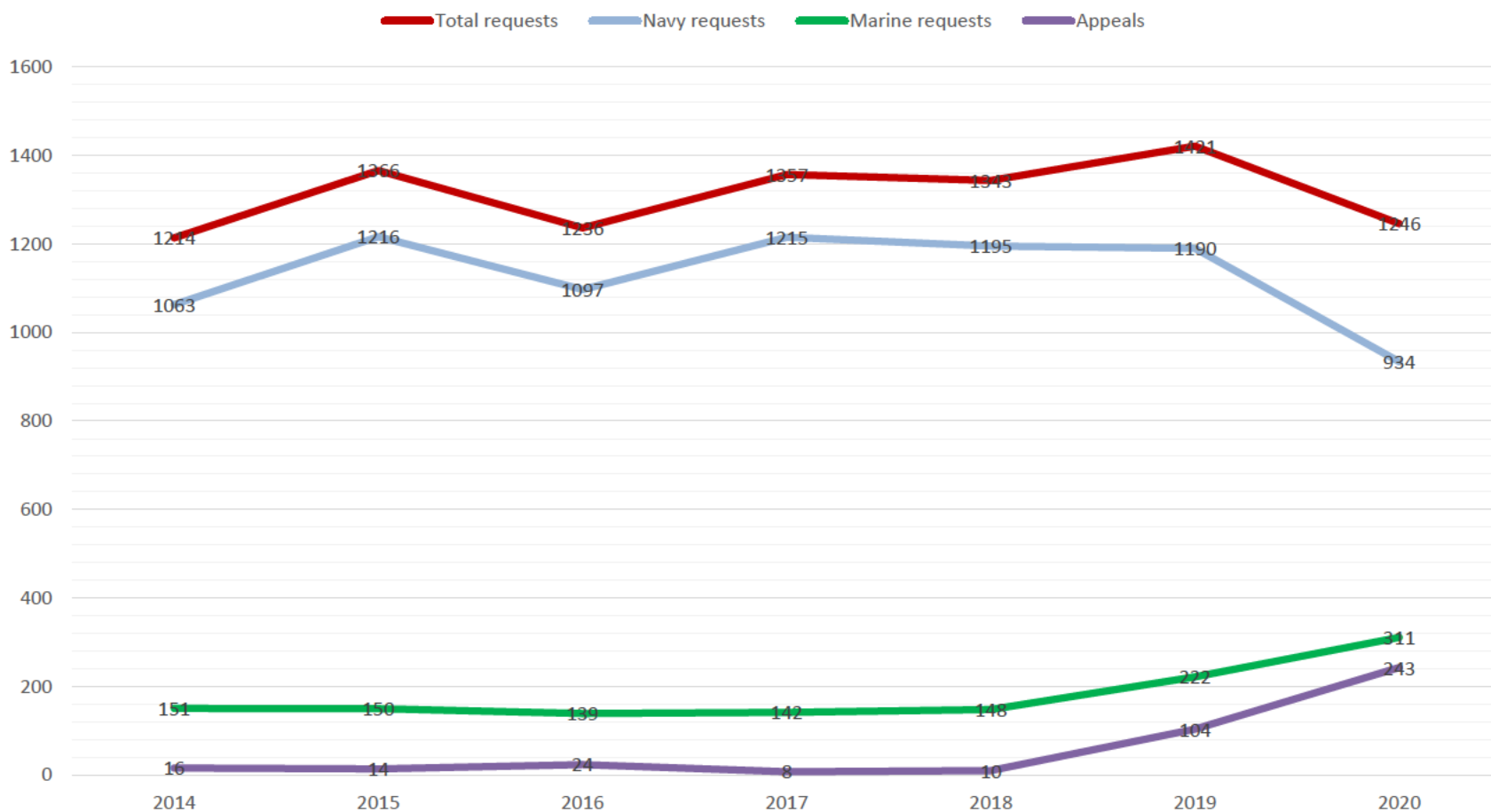
COVID-19—Cancellations

- DON--Full service
- CANCELLED: DON FOIA Law Conference (in-person), in D.C. of Nov 2-6, 2020
 - Instead: *Teleconferences*—Stay tuned
- CANCELLED: DoD & DOJ training
 - But there is training online (& it's still required once a year):
https://jkodirect.jten.mil/html/COI.xhtml?course_prefix=DOJ&course_number=-US001
- VIRTUALIZED: DON IT Conferences, Nov 2-8, 2002 &

COVID? Backlogged Cases (Mar-Sep 2020)



COVID? Backlogs on Sep 1, 2014-20



Backlog Background: DoD Backlog Tasking

- On May 1, 2017, DoD tasked all subcomponents with backlog greater than 500 requests (that includes us) to following:
- 5 percent reduction for each of next 5 FYs

Backlog Background: FOIA lawsuits filed in FY 19

- Fed gov totaled 849.
 - The year before, FY 18: all-time high of 859.
- Air Force—9
- Army—20
- DON—11 (FY 19 was all-time high)
 - DON litigation costs: \$198,380

Backlog trends: Fed v. DON

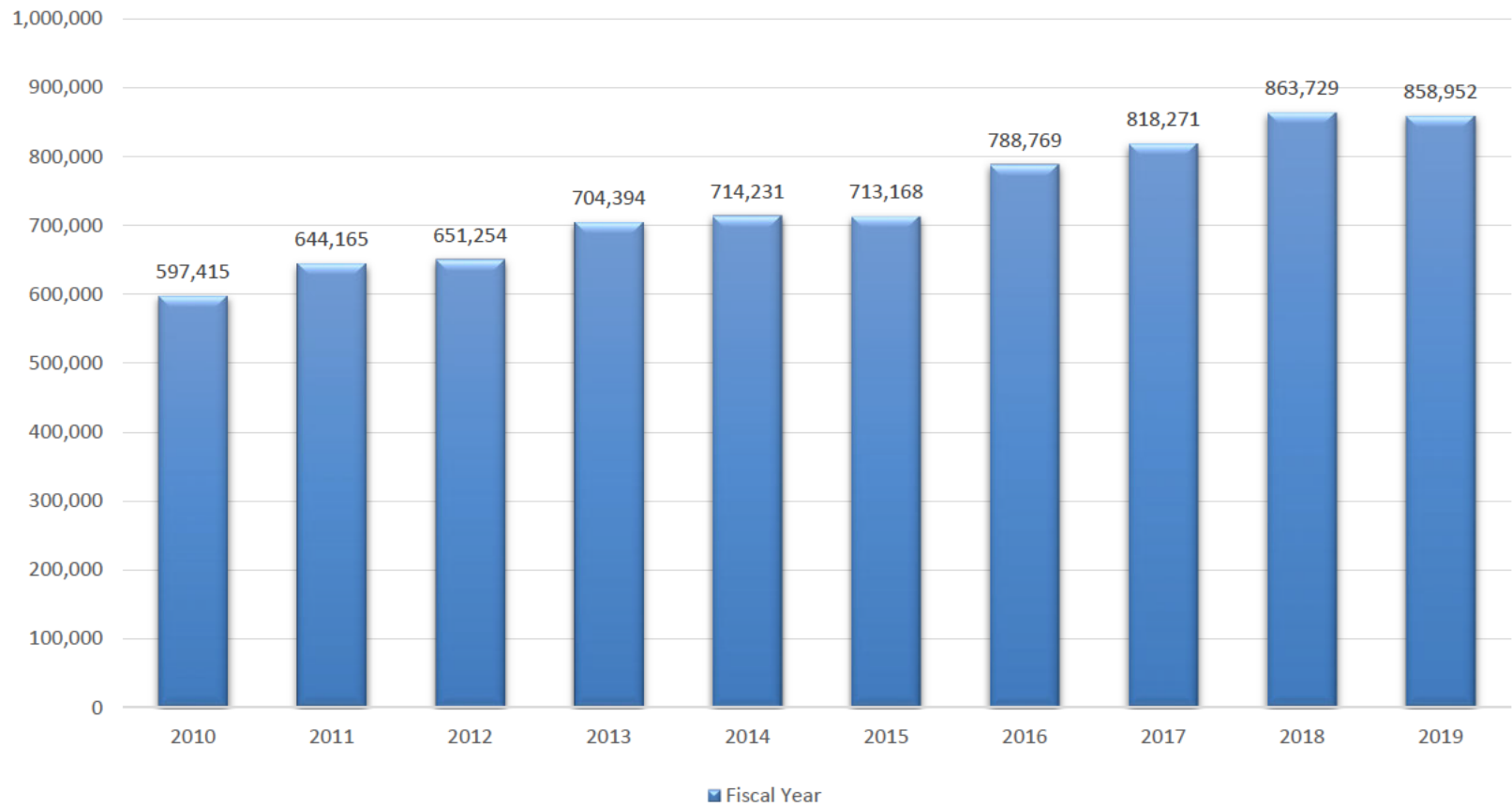
- “Despite a 35-day government shutdown during FY 2019, agencies processed a record high of 877,964 requests, which contributed to a 7.9% reduction in the government's overall backlog. ”

--DOJ FY 2019 FOIA report

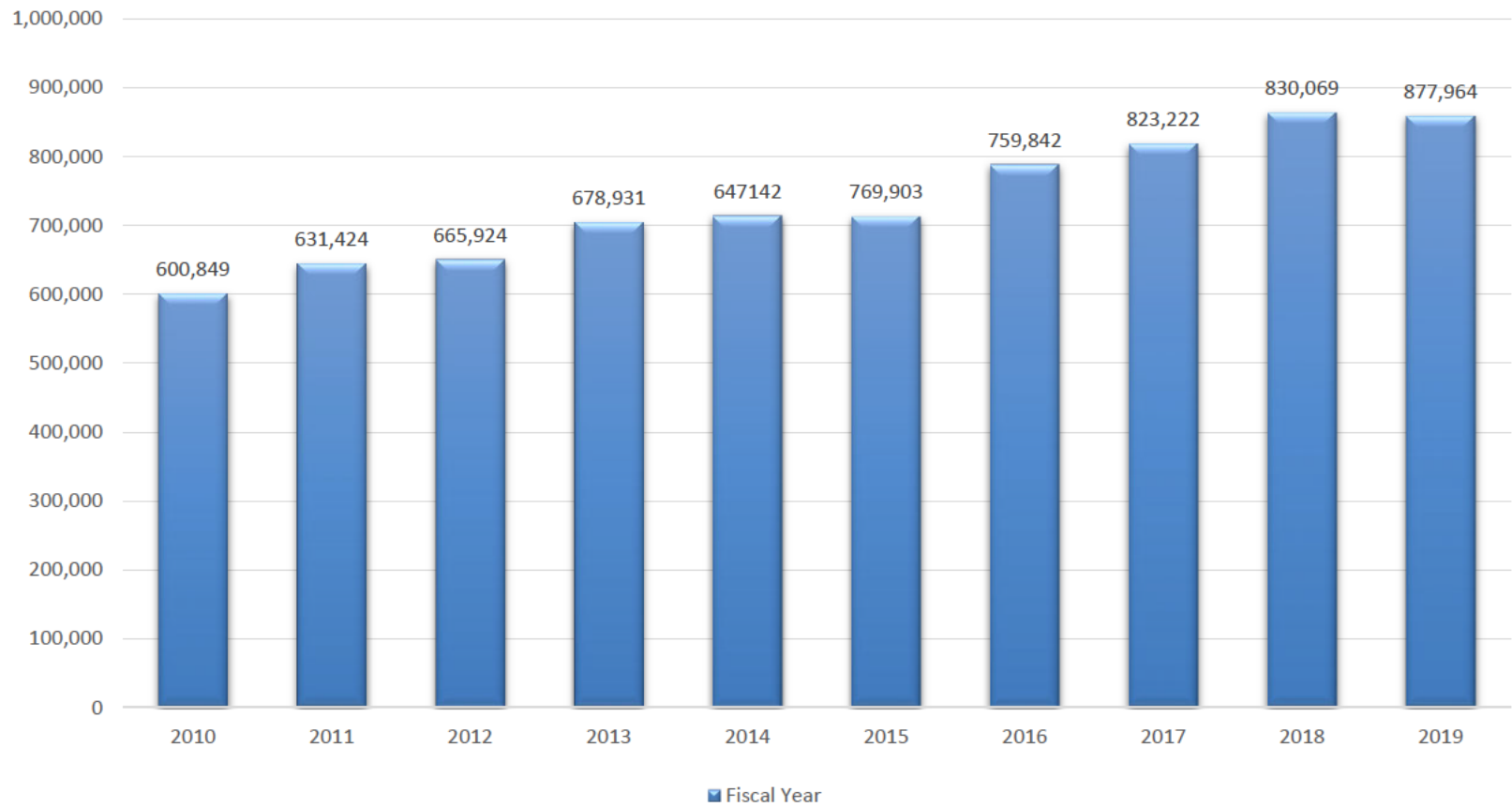
Backlog trends: In FY 19, Fed gov--

- Processed 877,964 (↑ 6% from FY 18) *most ever*
- Received 858,952—(↓ 1% from FY 18, the highest year)—*second most ever*
- Shrank backlog to 120,436 (↓ 8%)—*third highest ever*

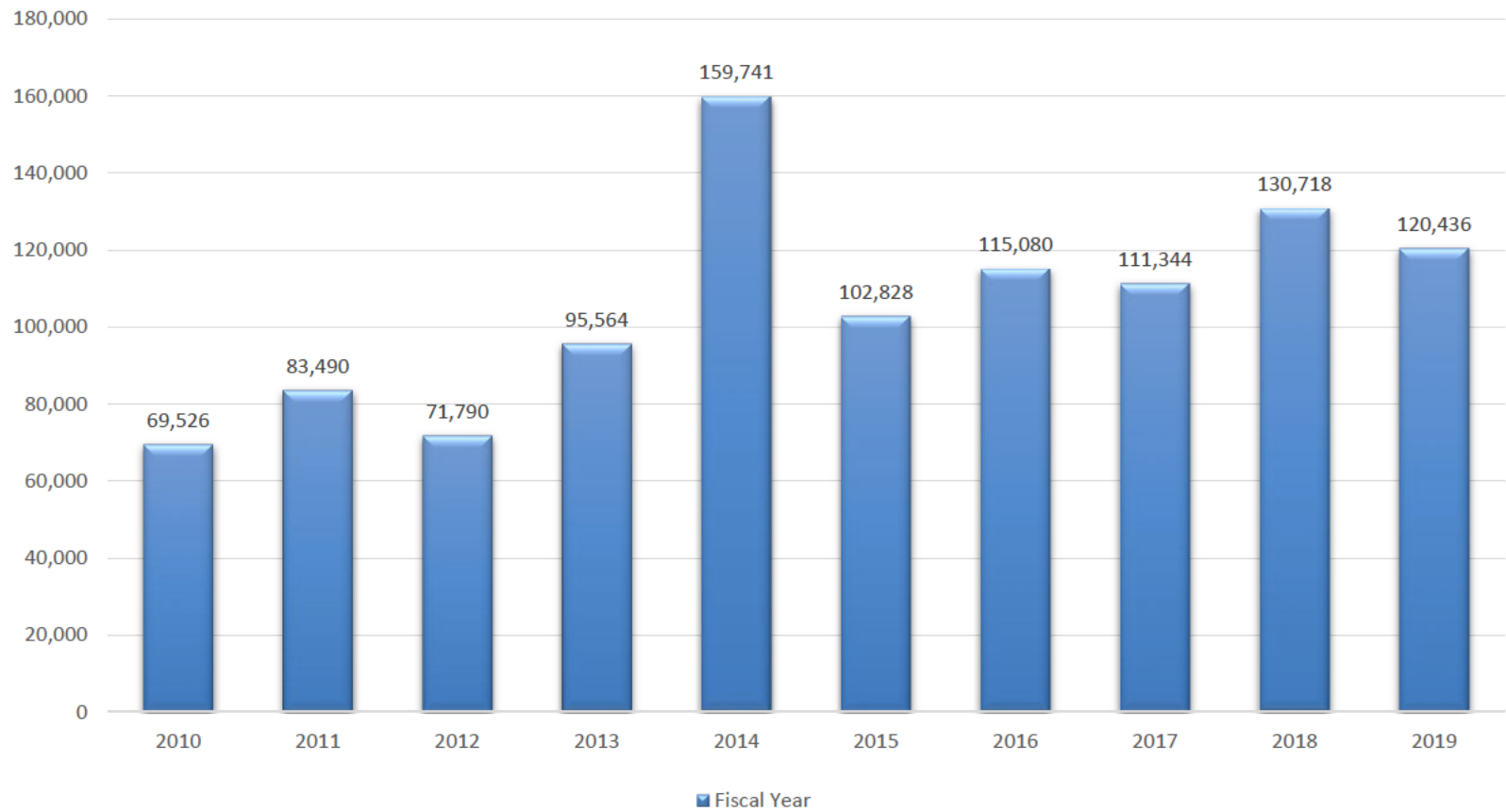
All Fed Requests Received, 2010-19



All Fed Requests Processed, 2010-19



All Fed Requests Backlogged, 2010-19



Backlog trends: In FY 19—DoD in Top 8

8 Agencies = 83% of backlog

1. DHS 26%

2. DOJ 21%



3. DoD 11%

4. State 9%

5. HHS 7%

6. DOI 3%

7. DOT 3%

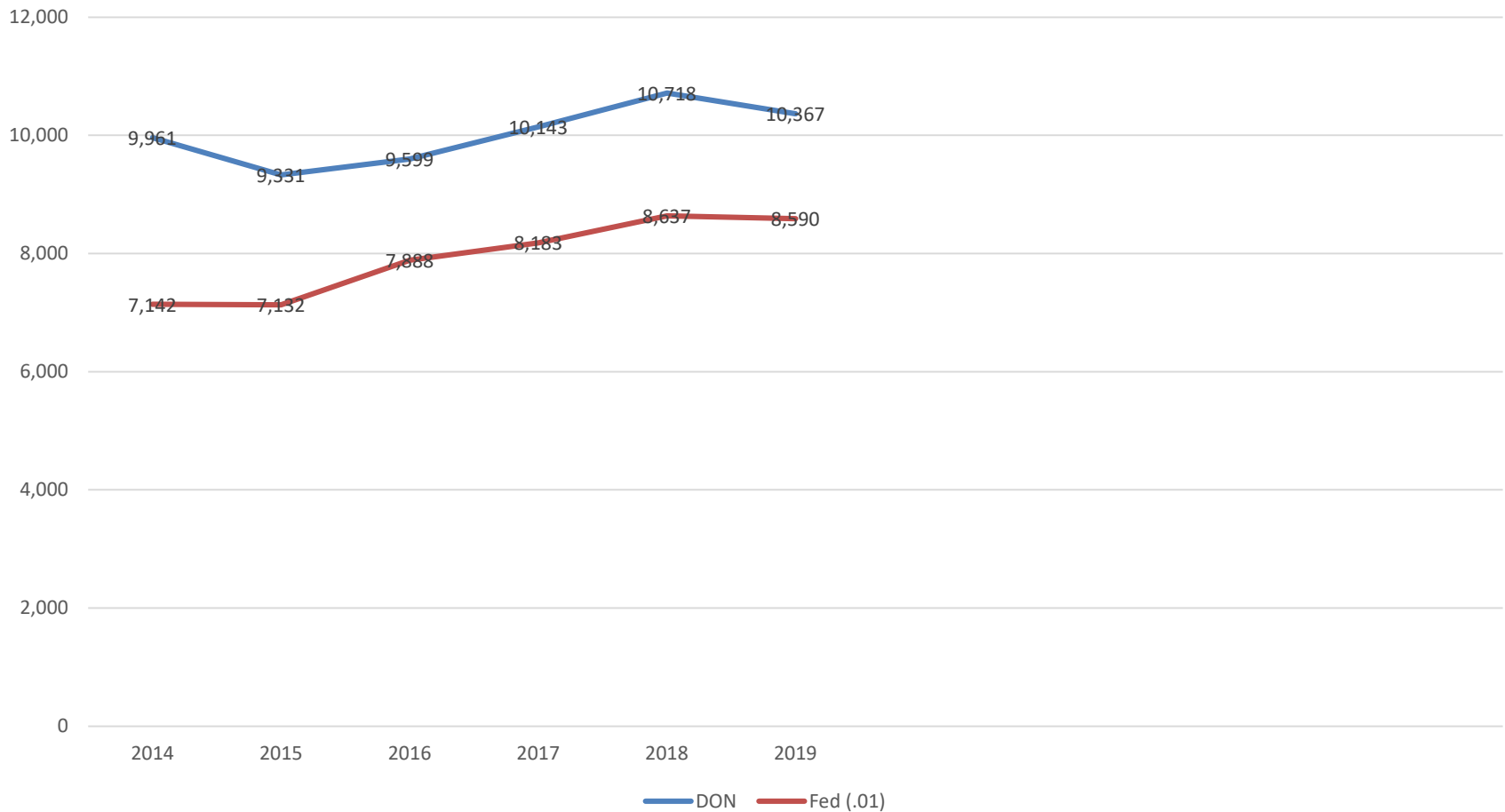
8. NARA 3%

➤ DoD: 6% of received, 11% of backlog

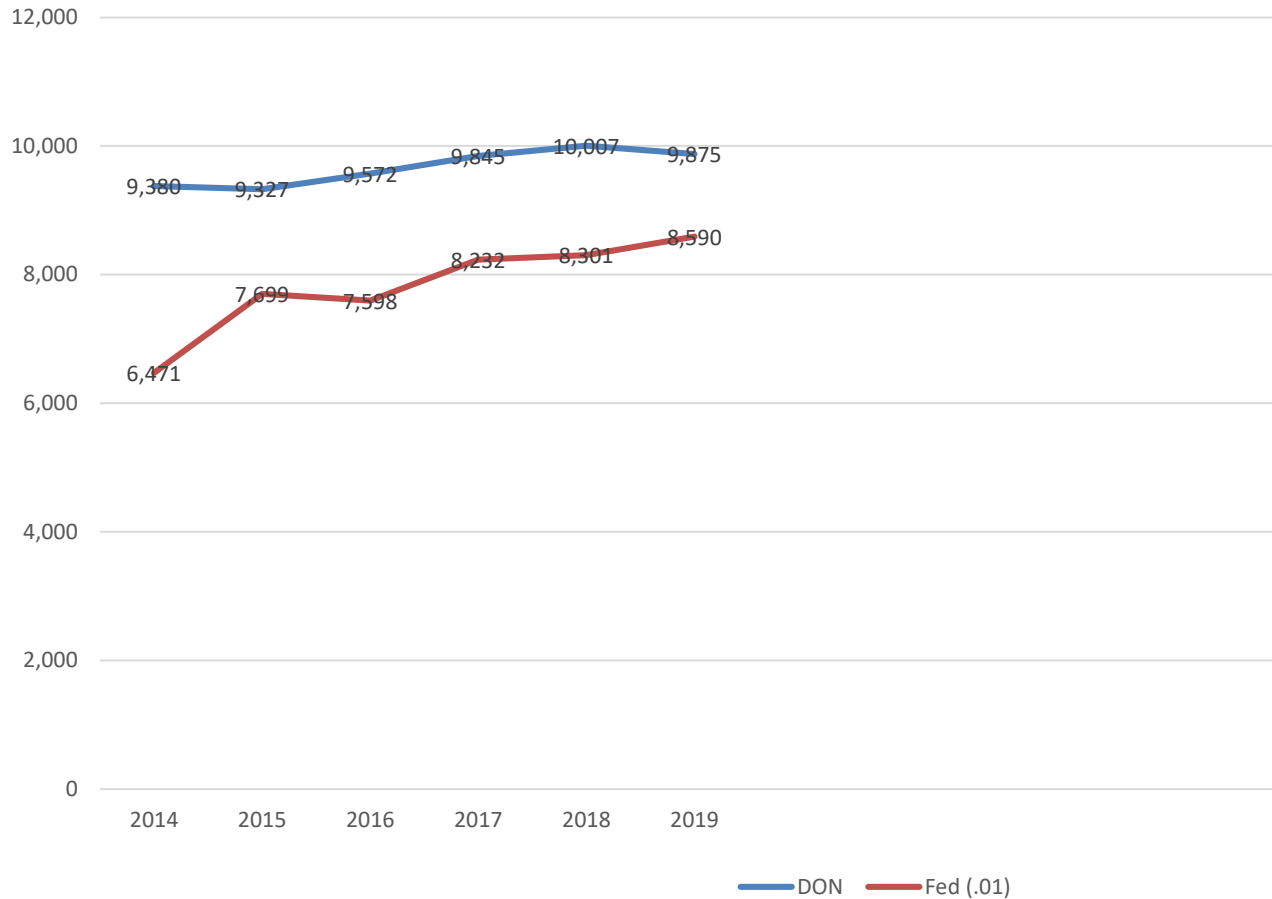
Backlog trend: In FY 19, DoD & DON

- Good news: Fed overall--89 (of 118 reporting) agencies had a backlog of fewer than 100 requests.
 - DoD is one of 13 agencies with backlog of 1,000+
 - *DON alone has backlog greater than 1K*

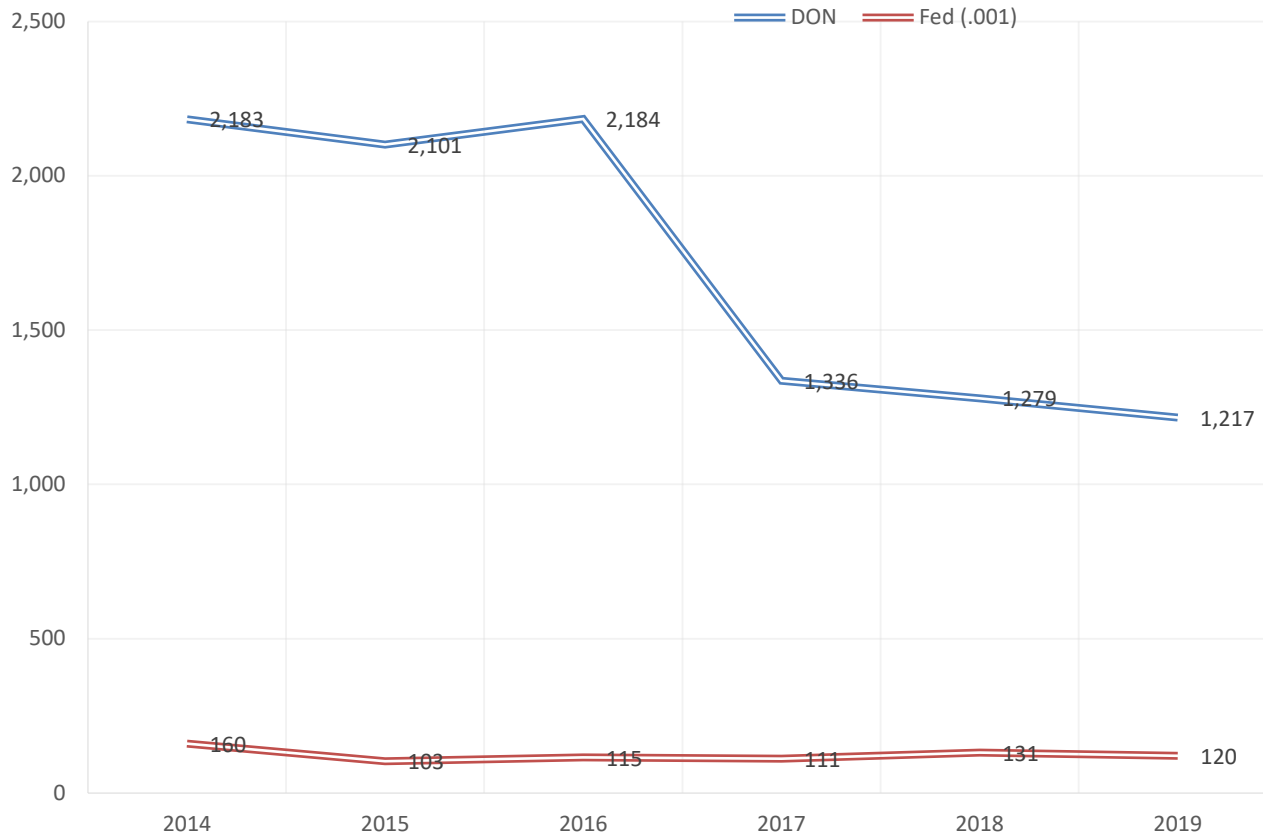
DON v Fed: Requests Received 2014-19



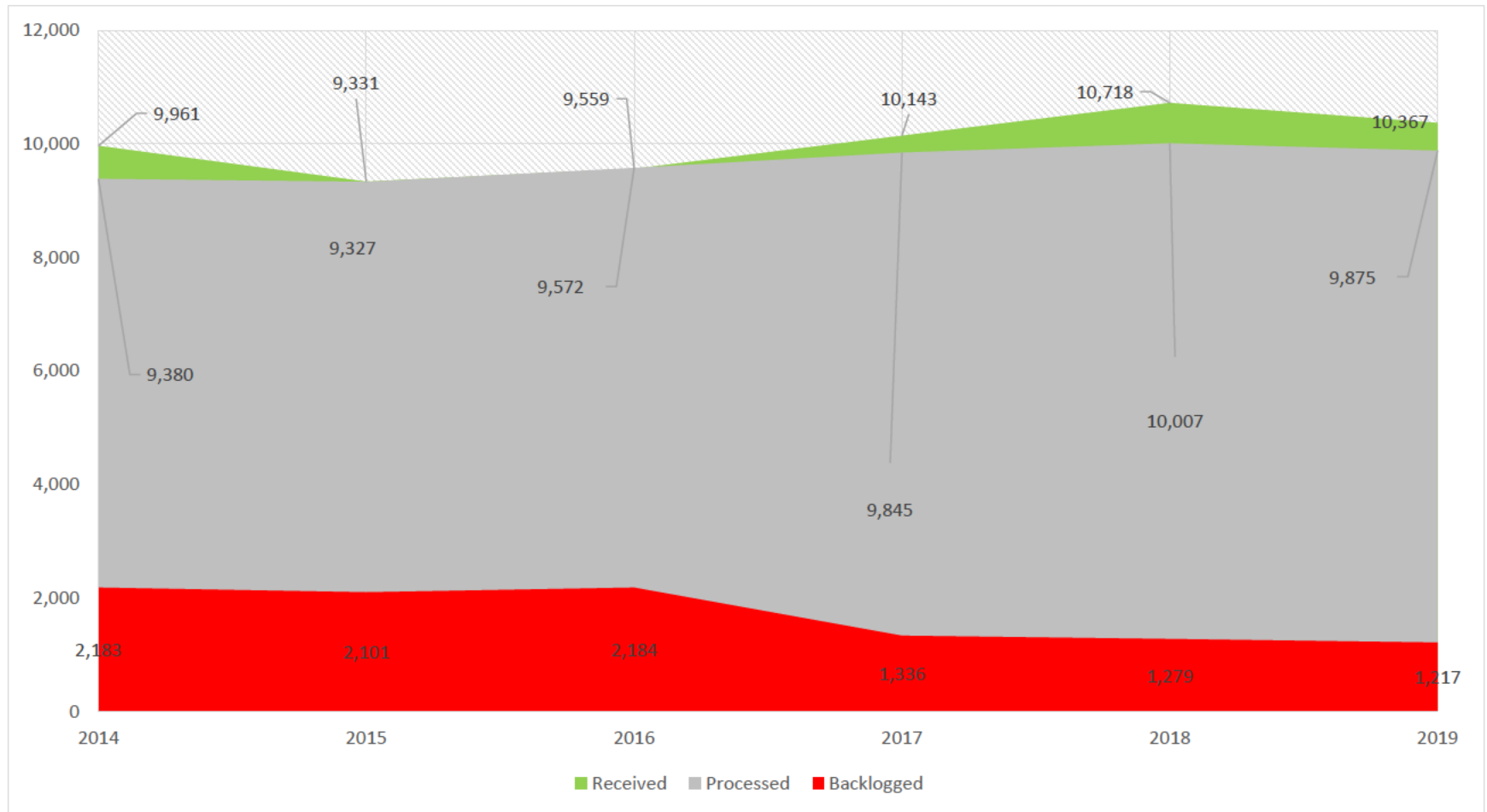
DON v Fed: Requests Processed 2014-19



DON v Fed: Requests backlogged FY 2014-19



DON requests: Received, Processed, Backlogged (FY 2014-19)



DoD components—Backlogs & Oldest (FY 2019)

DoD component	Backlog				Requests Received	Requests Processed
	Requests		Appeals			
	Total	Oldest	Total	Oldest		
Air Force	1,444	2/27/13	208	10/4/11	5,320	5,061
Army	1,016	9/23/13	94	1/20/15	25,680	25,907
DON (Navy & Marine Corps)	1,217	8/19/11	182	7/21/17	10,367	9,875
DoD Total	13,198	3/3/05	893	12/15/09	56,524	55,545

DON Backlog: 10 Oldest Still Open after FY19

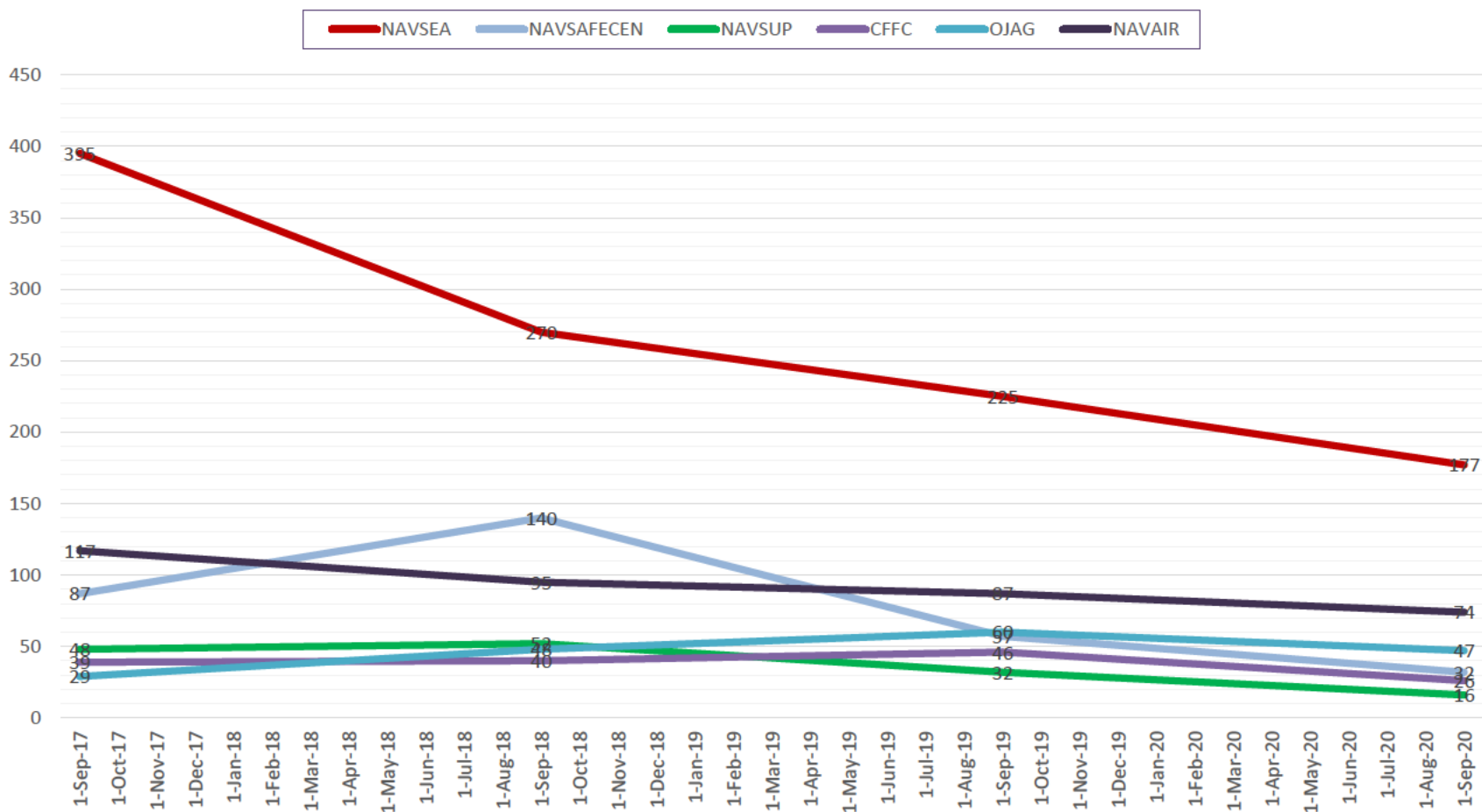
- Requests: 7 of 10 closed (~~1/18/2013, 11/19/2012, 10/24/2012, 10/04/2012, 7/3/2012, 1/31/2012, 1/27/2012, 1/26/2012, 1/25/2012, 8/19/2011~~)
- Consultations: 4 of 10 closed: (~~1/5/2016, 1/5/2016, 11/24/2015, 11/4/2015, 6/25/2015, 11/14/2014, 9/11/2014, 5/12/2014, 12/19/2013, 6/24/2011~~)
- Appeals 3 of 10 closed: (~~8/9/2018, 8/3/2018, 8/3/2018, 7/11/2018, 7/2/2018, 6/19/2018, 6/14/2018, 3/21/2018, 9/14/2017, 7/21/2017~~)

DoD components—Response Times (Median # of Days, FY 2019)

DoD component	Requests			Appeals
	Simple	Complex	Expedited	
Air Force	27	169	67	32
Army	6	100	26	581
DON (Navy & Marine Corps)	139	219	144	21
DoD Total	13	111	42	21

Backlog: FY 2020's Biggest Losers

	Sep 30, 2016	Sep 30, 2017	Sep 30, 2018	Sep 30, 2019	Sep 1, 2020	Percent reduction Since FY 2019
NAVSEA	513	395	270	225	177	-15
NAVSAFECEN	63	87	140	57	32	-28
NAVSUP	293	48	58	32	16	-69
CFFC	22	39	40	46	26	-39
OJAG	40	29	48	60	47	-18
NAVAIR	91	117	95	87	74	-16



Big, but invisible . . .

Busiest FOIA Commands by requests			
		Requests FY 2020 to Aug 31, 2020	Backlog Aug 31, 2020
1	NCIS	1,473	136
2	MCICOM	1,124	96
3	USMC HQ	764	105
4	NAVSEA	599	177
5	NPC	593	1
6	Navy HQ	528	38
7	CNIC	521	90
8	BUMED	363	29
9	NAVFAC	354	93
10	NAVSAFCECN	322	32
11	OJAG	297	47
12	NAVAIR	289	74

FOIAonline—Sunnier skies ahead?



- Moved to “Cloud” on July 9, 2018
i.e., switched from servers managed
by Booz Allen Hamilton to those by
Amazon Web Services (AWS).
- *New design
- *More reliable
- *Possible new features (e.g., library)

FOIAonline—Sunnier skies?



- EPA re-org:
 - e-Rulemaking → EPA Office of General Counsel (eDiscovery Division)
 - Budget
 - ❖ In FY20 \$2.3 million → \$3 million (w/ new EPA subsidy, \$1m)
 - ❖ In FY21, → \$3 million (w/ additional EPA subsidy, \$517,180)
 - Give us thru FY2020 to fix basic problems, then new features in FY 2021

DoD-Enterprise Solution

- On Jan 23, DoD Office of the Chief Management Officer (OCMO):
 - Ideal State Solution—Advanced case mgt suite w/integrated eDiscovery & redaction
 - ❑ For all DoD components
 - ❑ For all FOIA & Privacy needs, incorporating Records Management
 - ❑ Centralized reporting & tracking

DoD Enterprise Solution--Issues

- When?
- Who will pay? (DoD funding for all on table)
- Testing, training, contractual support, help desk, consolidation information across all 4 domains (NIPR, SIPR, JWICS, NMCI), migration and preservation of historical data into new tool
- Market analysis (e.g., FOIA Express)

FOIAonline update: New Help Desk

- Email: foiaonlinehelp@sysaidit.com
- Phone: 844-238-7744
- New hours of operation: 8:00 – 6:00 pm ET (M-F, excluding federal holidays)

Training for FOIAonline

- On FOIAonline, training videos at <https://www.foiaonline.gov/foiaonline/action/public/resources>

New FOIA instructions

❑ SECNAVINST 5720.42G (~~SECNAVINST 5720.42F~~)

Minimalist concept (shorter & DON specific):
Supplements DoD instructions and DON website
(<http://www.doncio.navy.mil/>)

- Key provisions:

- CO's to take responsibility (awaiting Navy text)
 - 90 day appeals period
 - Echelon III has IDA delegation authority

❑ DoD instructions

- 32 CFR 286—
- DoDM 5400.07 (replaces DoD 5400.7-R)

Websites

- DON CIO (<http://www.doncio.navy.mil>)
- Navy
(<https://www.secnav.navy.mil/foia/Pages/default.aspx>)
- Marine Corps
<https://www.hqmc.marines.mil/Agencies/USMC-FOIA/>
- Judge Advocate General's Corps
<https://www.jag.navy.mil/library/foia.htm>

Annual Report Schedule

- 10/26: Initial review of Annual Report (AR) and Raw Data Extract (RDE) with DOJ and select agencies
- 10/29: (started) Data Quality activities with agencies
(see next slide for errors identified to date)
- 11/2: Deploy Release 3.1.5 to correct known issues with AR and RDE
- 11/5: Subsequent review of AR and RDE by DOJ and select agencies

Pending results: provide AR and RDE to all agencies

- 11/5 – 11/19: Development team on stand-by to assist with error correction to produce final ARs and RDEs

Practice Tips

- ✓ Don't perfect prior to referral
- ✓ Practice good records management
 - Keep 7 years after final agency action (or 3 years after court adjudication). See SECNAVINST M-5210.1
- ✓ Document your work--Use FOIAonline "Comments"
- ✓ Letter of denial—advise of right to contact OGIS (& me)
- ✓ Grant expedited processing liberally
- ✓ Post to website so you don't have respond again

“Safe”-keeping Documents

- AMRDEC Safe is not
- Instead use DoD Safe

DCRIT—Call me

- Beware of DoD DCRIT categories
 - DCRIT (Defense Critical Infrastructure Information [previously, CISI]): Info that may be withheld because its release could harm public, though it is not classified.
 - The statute (10 USC 130e) requires review by DoD (only exemption like this)
 - DoD created categories so as to eliminate need for DoD review
 - *But the DoD giveth, and the DoD taketh away!

Training for FOIAonline

- On FOIAonline, training videos at <https://www.foiaonline.gov/foiaonline/action/public/resources>

Training (general FOIA knowledge)

- Preliminary and annual refresher required for all DON FOIA processors. Available at DON FOIA website, under heading “Training” (<http://www.doncio.navy.mil/ContentView.aspx?ID=5232>)
- DoJ (<https://www.justice.gov/oip/training>)
- DOD FOIA/Privacy Act workshops:
 - *1) March 26-28, 2019, MacDill AFB, FL.
 - *2) August 6-8, 2019, Scott AFB, IL

Awards

- Nominate now!

- Excellence in DON Freedom of Information
- Categories: Leadership, Efficiency, Outreach, Program Compliance
- Past recipients: USMC ((b) (6)), NCIS ((b) (6)), NHHC ((b) (6))

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Difficult requesters

- Be professional
- Don't have to submit to abuse
- Public Liaison: Direct mediation & Assistance
(contact me at christopher.a.julka@navy.mil,
703-697-0031)

Questions???

Christopher Julka

Department of Navy

FOIA Policy Lead/Public Liaison

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DEPARTMENT OF THE NAVY
CHIEF INFORMATION OFFICER
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

20 November 2014

MEMORANDUM FOR DISTRIBUTION

Subj: DEPARTMENT OF THE NAVY FREEDOM OF INFORMATION ACT TRAINING

- Ref: (a) Under Secretary of the Navy Memorandum, "Department of the Navy (DON) Freedom of Information Act (FOIA), Privacy and Civil Liberties Programs," May 14, 2012
- (b) Department of Defense Director of Administration and Management (DA&M) Memorandum, "State of the Department of Defense Freedom of Information Act Program," April 3, 2014

Reference (a) appointed the Department of the Navy Chief Information Officer (DON CIO) as the DON Senior Freedom of Information Act (FOIA) Official, responsible for FOIA oversight and management activities, including all actions necessary to ensure DON compliance. The purpose of this memorandum is to establish minimum training requirements for FOIA professionals that will set a department standard, raise the level of understanding, and improve consistency across the DON FOIA program.

All current DON FOIA professionals must complete the Department of Defense (DoD) FOIA 101 online training course, available through Defense Connect Online (DCO), no later than March 31, 2015. DON FOIA professionals who report after that date must complete the DoD FOIA 101 training course or a DON CIO approved equivalent course within 60 days of their entrance on duty date. The DON CIO has published information about DoD FOIA 101 and a list of other approved FOIA training courses on the DON CIO website under the heading "Training" at <http://www.doncio.navy.mil/ContentView.aspx?ID=5232>.

DoD FOIA 101 online training is a one-time requirement for DON FOIA professionals, including FOIA coordinators, FOIA specialists, individuals who process FOIA requests, and personnel who act in FOIA matters on either a full-time basis or as a collateral duty. After the initial DoD FOIA 101 or approved equivalent training requirement has been met, all DON FOIA professionals must complete at least one substantive FOIA training session each subsequent fiscal year. This is the minimum DON FOIA training requirement.

Online training is encouraged when available as an alternative to training that requires travel and associated expenses. Though each DON command or activity determines which type of training best suits its needs, the DON CIO will be the final authority on whether a course meets DON FOIA training requirements. Government-provided FOIA training at no cost is preferred; however, substantive FOIA training offered by a non-government entity or entities will also be included on the posted list of approved options.

Subj: DEPARTMENT OF THE NAVY FREEDOM OF INFORMATION ACT TRAINING

Navy and Marine Corps course completion data for DoD FOIA 101 and approved equivalent training will be reported to the DON CIO for inclusion in the second quarter, FY 2015 FOIA report submitted to DoD. In accordance with reference (b), attendance at approved substantive FOIA training that is completed after the second quarter FY 2015 will be reported in the FY 2015 and all subsequent annual Agency Chief FOIA Officer reports.

The DON CIO point of contact for this FOIA training guidance is (b) (6)

(b) (6)

(b) (6)

✓ Acting ✓

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Subj: DEPARTMENT OF THE NAVY FREEDOM OF INFORMATION GUIDANCE

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